TEXAS REGISTER

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Cristina Garcia

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 13, 2008

Designating James E. Herring of Amarillo as Presiding Officer of the Texas Water Development Board for a term at the pleasure of the Governor. Mr. Herring is replacing E.G. Rod Pittman of Lufkin as presiding officer.

Designating John Paul Flores as Presiding Officer of the Texas Residential Construction Commission, effective February 14, 2008, for a term at the pleasure of the Governor. Mr. Flores is replacing Patrick Cordero of Midland as presiding officer.

Appointed to the Texas Workforce Investment Council for a term to expire February 1, 2013, Blas Castaneda of Laredo (replacing Mary Pat Moyer of San Antonio whose term expired).

Appointed to the Texas Water Development Board for a term to expire December 31, 2013, Joe M. Crutcher of Palestine (replacing E.G. Rod Pittman of Lufkin whose term expired).

Appointed to the Environmental Flows Advisory Group, pursuant to HB 3 and SB 3, 80th Legislature, Regular Session, for a term to expire at the pleasure of the Governor, Joe M. Crutcher of Palestine.

Appointed to the Texas Residential Construction Commission, effective February 14, 2008, for a term to expire February 1, 2009, Steven R. Leipsner of Austin (replacing Patrick Cordero of Midland who resigned).

Appointments for February 14, 2008

Appointed to the Texas Ethics Commission for a term to expire November 19, 2011, Warren Tom Harrison of Austin (Mr. Harrison is being reappointed).

Designating Carl Settles of Harker Heights as Presiding Officer of the Texas State Board of Examiners of Psychologists for a term at the pleasure of the Governor. Mr. Settles is replacing Pauline Clansy of Houston as presiding officer.

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Teresa Hernandez of San Marcos (replacing Lori Roberts of Austin who no longer qualifies).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Yvonne M. Caldera of Lubbock (replacing John D. McCloy of Katy who resigned).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2009, Debra B. Emerson of Austin (replacing Vicky Coffee-Fletcher of Austin who no longer qualifies).

Appointed to the Continuing Advisory Committee for Special Education for a term to expire February 1, 2011, Teresa Hernandez of San Marcos (replacing Christy Dees of Austin who no longer qualifies).

Appointed to the Advisory Committee on the Regulation of Controlled Substances Act, pursuant to SB 1879, 80th Legislature, Regular Session, for a term to expire September 1, 2009, Aaron Calodney of Flint.

Appointed to the Advisory Committee on the Regulation of Controlled Substances Act, pursuant to SB 1879, 80th Legislature, Regular Session, for a term to expire September 1, 2009, E. Alan Thornton of Lumberton.

Appointed to the Advisory Committee on the Regulation of Controlled Substances Act, pursuant to SB 1879, 80th Legislature, Regular Session, for a term to expire September 1, 2009, Catherine Scholl of Austin.

Appointed to the Advisory Committee on the Regulation of Controlled Substances Act, pursuant to SB 1879, 80th Legislature, Regular Session, for a term to expire September 1, 2009, John Chaddick of Temple.

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2011, Jo Ann Campbell of Abilene (replacing Ruben Rendon of Dallas whose term expired).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2013, Timothy Branaman of Dallas (replacing Arthur Hernandez of San Antonio whose term expired).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2013, Lou Ann Mock of Bellaire (replacing Pauline Clansy of Houston whose term expired).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2013, Angela Downes of Irving (replacing Betty Angelo of Midland whose term expired).

Rick Perry, Governor

TRD-200801024

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Opinion

Opinion No. GA-0602

The Honorable Marsha Monroe

Terrell County Attorney

Post Office Box 745

Sanderson, Texas 79848

Re: Whether, under Local Government Code chapter 334, Terrell County may borrow money to construct an approved venue project, to be repaid from the venue project fund (RQ-0618-GA)

S U M M A R Y

A county, such as Terrell County, may use money in its venue project fund to pay any of the costs of constructing an approved venue project. The county may borrow money to pay such costs, to be repaid from the venue project fund, only by the "issuance of bonds . . . or other obligations."

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200801021

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: February 20, 2008

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TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinions

EAO-478. The Texas Ethics Commission has been asked to consider whether an elected judge may use political contributions to pay the premiums of a Judge's Professional Liability Insurance Policy. (AOR-541)

SUMMARY

The use of political contributions to pay a premium of a "judge's claims made professional liability insurance policy" that only covers expenses incurred in connection with claims or lawsuits brought against a judge in his official capacity as a public officeholder does not constitute a personal use.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200800937
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: February 14, 2008

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EAO-479. The Texas Ethics Commission has been asked to consider whether a general-purpose political committee may ask a candidate for the house of representatives questions concerning candidates for speaker of the house of representatives and whether the committee may base its decision to support or not to support the candidate for the house of representatives on the responses to those questions. (AOR-542)

SUMMARY

Placing a candidate on notice that a general-purpose committee will base its decision on whether or not to support the candidate on the candidate's responses to the specific questions provided by the requestor of the opinion would constitute legislative bribery under §302.032 of the Government Code. Whether a candidate has been placed on such notice is a fact question and, as we have stated in previous opinions, an advisory opinion cannot resolve fact issues.

The legal value of an Ethics Advisory Opinion is to provide a defense to prosecution for activities that, in the opinion of the Ethics Commission, are not in violation of the laws under the jurisdiction of the Ethics Commission. We cannot provide that type of defense in this request because we cannot anticipate the different circumstances in which the specific questions listed above may be asked.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200800885
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: February 13, 2008

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.50

The Texas Ethics Commission proposes new §20.50, relating to the reporting of the total amount of political contributions maintained.

A campaign finance report is required to disclose the total amount of political contributions maintained in one or more accounts as of the last day of the reporting period. The new rule would clarify what is included in the total amount to be reported.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed new §20.50 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §20.50 affects §254.031(a)(8) and §254.0611(a)(1), Election Code.

§20.50. Total Political Contributions Maintained.

(a) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained includes the following:

(1) Currency;

(2) Balance on deposit in banks, savings and loan institutions and other depository institutions;

(3) Any investments valued at cost that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc.; and

(4) Traveler's checks and money orders.

(b) For purposes of Election Code §254.031(a)(8) and §254.0611(a)(1), the total amount of political contributions maintained does not include personal funds that the filer intends to use for political expenditures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800950
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS

The Texas Ethics Commission proposes amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85, relating to the reporting of joint lobby expenditures, the permissibility of contingent fees, and lobby entities.

The proposed amendment to §34.11 reflects changes made by H.B. 2735, 80th legislature. The new law provides that the lobbyist reports only the portion of the amount of the joint expenditure attributable to the lobbyist, including any amount made on behalf of the lobbyist by a person who is not a registered lobbyist.

The proposed amendment to §34.21 would clarify the rule by providing that contingent fees are permissible for efforts to influence state agency purchasing decisions of a product, a service, or a service provider.

The proposed amendment to §34.45 would provide that an entity that avoids the requirement to register as a lobbyist by having a lobbyist report on its behalf is subject to §305.024 of the Government Code.

The proposed amendment to §34.65 would require a registered lobbyist reporting compensation on behalf of an entity that is avoiding registration to report the compensation by the date on which the entity, if registered, would have been required to report the compensation.

The proposed amendment to §34.85 would set a criteria that must be satisfied before a registered lobbyist may report an expenditure on behalf of an entity in order for the entity to avoid the requirement to register as a lobbyist.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed. Mr. Reisman has also determined that the rules will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.11, §34.21

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 affect Chapter 305 of the Government Code.

§34.11. Attribution of Expenditure to More Than One Person; Reimbursement of Lobby Expenditure.

(a) Except as provided by Government Code, §305.0021, a [~~A~~] lobby expenditure made on a person's behalf and with the person's consent or ratification is an expenditure by that person for purposes of registration and reporting under Government Code, Chapter 305, and this chapter.

(b) - (c) (No change.)

§34.21. Contingent Fees for Influencing Purchasing Decisions. Government Code §305.022, does not prohibit contingent fees for efforts to influence state agency purchasing decisions of a product, a service, or a service provider.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800951
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.45

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 affect Chapter 305 of the Government Code.

§34.45. Entity Registration.

(a) (No change.)

(b) An entity that avoids registration under subsection (a) of this section becomes subject to Government Code, §305.024 on the date that the entity would have been required to register as a lobbyist, and ends on midnight, December 31, of each year in which the activity occurs.

(c) [~~(b)~~] Registration by an entity does not relieve any individual of the requirement to register if that individual meets one of the registration thresholds in Government Code, §305.003.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800952
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
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SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.65

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 affect Chapter 305 of the Government Code.

§34.65. Compensation Reported by Lobby Firm Employee.

(a) - (b) (No change.)

(c) The individual registrant shall report the compensation by the date on which the entity, if registered, would have been required to report it. The individual registrant shall indicate on a registration or amended registration, as applicable, that he has reported compensation and/or reimbursement paid to an entity for lobby activity by one or more persons other than the registrant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800953
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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SUBCHAPTER D. LOBBY ACTIVITY REPORTS

1 TAC §34.85

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §§34.11, 34.21, 34.45, 34.65, and 34.85 affect Chapter 305 of the Government Code.

§34.85. Individual Reporting Expenditure by Entity.

(a) An individual registrant may report an expenditure made by a lobby entity if:

(1) The [~~the~~] entity requests that the individual do so in order for the entity to avoid registration; and[~~.~~]

(2) The entity makes the expenditure in order for the individual to act on the entity's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; or

(3) The entity compensates or reimburses the individual to act on behalf of the entity or on behalf of the entity's clients to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) The individual registrant shall report the expenditure by the date on which the entity, if registered, would have been required to report it. The individual registrant shall indicate on a lobby activity report that he or she has reported expenditures made by an entity and indicate the specific amount reported on behalf of the entity.

(c) For purposes of Government Code, §305.0021(b), an expenditure made by an entity under subsection (a) of this section, is not a joint expenditure for purposes of Government Code, §305.0021(b) if the entity makes the entirety of the expenditure at issue.

(d) [~~(b)~~] In this provision "lobby entity" means a corporation, association, firm, partnership, committee, club, organization, or other group of persons voluntarily acting in concert that meets one of the registration thresholds in Government Code, §305.003.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800954
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 463-5800

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CHAPTER 45. CONFLICTS OF INTEREST

1 TAC §§45.1, 45.3, 45.5, 45.7, 45.9

The Texas Ethics Commission proposes new §§45.1, 45.3, 45.5, 45.7, and 45.9, relating to the conflicts of interest requirements for the chief clerk or any other employee of the Texas Comptroller of Public Accounts and a Texas Facilities Commission member, employee, or appointee.

House Bill 3560, 80th Legislature, transfers to the Texas Comptroller of Public Accounts duties of the Texas Building and Procurement Commission that do not primarily concern state facilities and renames the commission the Texas Facilities Commission.

The proposed new rules under Chapter 45 (Conflicts of Interest) are added to address the conflict of interest portions of §2155.003 and §2152.064 of the Government Code. The new §45.1 is added to state that Chapter 45 applies to §2155.003 and §2152.064 of the Government Code. The new §45.3 is added to define relevant terms used in the conflict of interest provisions of §2155.003 of the Government Code at issue that relate to the comptroller. The new §45.5 is added to define relevant terms used in the conflict of interest provisions of §2152.064 of the Government Code at issue that relate to the Texas Facilities Commission.

The new §45.7 is added for guidance on the issue of rebates as applied to the conflict of interest provisions of §2155.003 of the Government Code. Subsection (a) defines the term "rebate;" subsection (b) prescribes when the chief clerk or employee of the comptroller is not prohibited from accepting a rebate.

The new §45.9 is added for guidance on the issue of rebates as applied to the provisions of §2152.064 of the Government Code. Subsection (a) defines the term "rebate;" subsection (b) prescribes when an employee, appointee, or commission member of the Texas Facilities Commission is not prohibited from accepting a rebate.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rules are in effect, there will be fiscal implications for the state as a result of enforcing or administering the rules as proposed. The cost is undetermined as of this date. There will be no fiscal implications to local government and no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rules.

The Texas Ethics Commission invites comments on the proposed rules from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The proposed new §§45.1, 45.3, 45.5, 45.7, and 45.9 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new §§45.1, 45.3, 45.5, 45.7, and 45.9 affects §2152.064 and §2155.003 of the Government Code.

§45.1. Application.

This chapter applies to §2152.064 and §2155.003 of the Government Code.

§45.3. Definitions.

(a) Section 2155.003 of the Government Code applies to:

(1) the chief clerk; and

(2) an employee who exercises discretion in connection with a contract, payment, claim, or other pecuniary transaction under the comptroller's purchasing authority.

(b) Under §2155.003 of the Government Code the following words and terms shall have the following meanings:

(1) "Chief clerk" and "employee" includes the spouse or dependent child of the chief clerk or employee.

(2) "Have an interest in" or "in any manner be connected with," is limited to the purchasing authority that was transferred to the comptroller by §2151.004 of the Government Code, and means a right, share, equitable or legal claim to, or pecuniary interest in, a contract or bid.

(3) "Value," "reward," and "compensation" includes anything with a monetary value of $5 or more.

(c) Section 2155.003 of the Government Code does not apply to the ownership of stock the value of which does not exceed the lesser of $25,000 or 5% in any one company, or ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

§45.5. Definitions.

(a) Section 2152.064 of the Government Code applies to:

(1) a commission member and appointee; and

(2) to an employee who exercises discretion in connection with a contract, payment, claim, or other pecuniary transaction under §2152.064 of the Government Code, or in connection with state surplus or salvage property.

(b) Under §2152.064 of the Government Code the following words and terms shall have the following meanings:

(1) "Commission member," "appointee," and "employee" includes the spouse or dependent child of a commission member, appointee, or employee.

(2) "Have an interest in" or "in any manner be connected with," means a right, share, equitable or legal claim to, or pecuniary interest in, a contract or bid, or a recipient of state surplus or salvage property under control of the commission.

(3) "Value," "reward," and "compensation" includes anything with a monetary value of $5 or more.

(c) Section 2152.064 of the Government Code does not apply to the ownership of stock the value of which does not exceed the lesser of $25,000 or 5% in any one company, or ownership of shares in a publicly traded mutual fund or similar investment vehicle in which the person does not exercise any discretion regarding the investment of the assets of the fund or other investment vehicle.

§45.7. Rebates.

(a) The term "rebate" includes a discount, return, or refund of money.

(b) The chief clerk or an employee of the comptroller is not prohibited from accepting a rebate that is offered or given on the same terms to all state employees or to the general public.

§45.9. Rebates.

(a) The term "rebate" includes a discount, return, or refund of money.

(b) An employee, appointee, or commission member of the Texas Facilities Commission is not prohibited from accepting a rebate that is offered or given on the same terms to all state employees or to the general public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800955
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 463-5800

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER C. LICENSING

4 TAC §7.23, §7.24

The Texas Department of Agriculture (the department) proposes amendments to §7.23 and §7.24, concerning licensing and regulation of pesticide applicators. The proposed amendment to §7.23, relating to applicator business proof of financial responsibility, is made to add language to clarify that a liability insurance policy is the only acceptable form of proof of financial responsibility for applicator businesses, which is the department's current practice. The proposed amendment to §7.24, relating to applicator recertification, is made to add language that requires that commercial or noncommercial applicators that are certified in the aerial application category must obtain three of the required five continuing education units (CEUs) in laws and regulations, drift minimization, and pesticide safety activities addressing human factors.

The proposed amendment to §7.23 is made to comply with §76.111 of the Texas Agriculture Code, which requires that each applicator business shall file with the department a liability insurance policy, certification of a policy or other proof of financial responsibility considered acceptable to the department protecting persons who may suffer damages as a result of the operations of the applicator business, its employees, and its agents. The department periodically receives requests from applicator businesses to accept other forms of financial responsibility, such as bonds or letters of credit, to satisfy the requirements of the Texas Agriculture Code. The department has determined that liability insurance is reasonably available and affordable and that no other form of financial responsibility will be accepted as proof of financial responsibility. The department is proposing this amendment to clarify its existing practice.

The proposed amendment to §7.24 is made in response to a request from the Texas Agricultural Aviation Association (TAAA) to strengthen the CEU requirements for commercial and noncommercial applicators certified in the aerial application category who operate aerial aircraft to apply pesticides. The TAAA has requested that the department require that these applicators acquire CEUs in specific categories to ensure the safety of pilots and enhance the protection of the public by having applicators attend CEU courses that are specific to the nature of their industry. The required number of CEUs will not be increased by this proposal. The amendments to §7.24 will be effective January 1, 2009, in order to allow applicators to use the CEUs that they may have already obtained in order to renew their license and to allow course sponsors time to develop appropriate course materials.

Jimmy Bush, Assistant Commissioner for Pesticides, has determined that, for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections, as amended.

Mr. Bush also has determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended sections will be increased efficiency and effectiveness in the use and application of pesticides and regulated herbicides. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the amended sections as proposed. Therefore, no regulatory flexibility analysis is required.

Written comments on the proposal may be submitted to Jimmy Bush, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Written comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture with the authority to adopt rules to carry out the provisions of Chapter 76 of the Texas Agriculture Code.

The Texas Agriculture Code, Chapter 76, is affected by the proposal.

§7.23. Applicator Business Proof of Financial Responsibility.

Each applicator business, as defined in the Act, §76.111, shall register with the department on a prescribed form and file proof of financial responsibility prior to making any applications of restricted-use or state-limited-use pesticides or regulated herbicides. This requirement shall be satisfied in the following manner.

(1) - (4) (No change.)

(5) For purposes of this rule, financial responsibility means a liability insurance policy in the name of the applicator business meeting the requirements of §76.111 of the Act pertaining to such insurance policies. The department has determined that no other form of financial responsibility is acceptable.

§7.24. Applicator Recertification.

(a) - (s) (No change.)

(t) Except as provided in paragraph (1) of this subsection, each [~~Each~~] commercial or noncommercial applicator must obtain at least five CEUs prior to the expiration of the license. A minimum of one hour each must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization.

(1) For commercial or noncommercial applicators certified in the aerial application category, three of the required five CEUs must be associated with aerial application operations to include one hour each in laws and regulations, drift minimization and pesticide safety activities addressing human factors.

(2) A commercial or noncommercial applicator may not recertify their license using department-approved correspondence activities for two consecutive years.

(3) Paragraph (2) of this subsection is effective beginning January 1, 2009.

(u) - (z) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800919

Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. SALES FINANCE LICENSES

7 TAC §§84.101 - 84.113

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined at the Office of Consumer Credit Commissioner or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (commission) proposes the repeal of 7 TAC Chapter 84, Subchapter A, §§84.101 - 84.113, concerning Sales Finance Licenses. The commission has determined that these rules more effectively belong in different locations within Chapter 84 in order to better track the organization of Texas Finance Code, Chapter 348. Therefore, these rules are being proposed for repeal; and new (relocated) rules are proposed elsewhere in this issue of the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that, for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed repeal is published in the *Texas Register*. At the conclusion of the 31st day after the proposed repeal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513, authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 348.

§84.101. Definitions.

§84.102. Filing of New Application.

§84.103. New Registered Offices.

§84.104. Transfer of License.

§84.105. Change in Form or Proportionate Ownership.

§84.106. Processing of Application.

§84.107. Amendments to Pending Application.

§84.108. Relocation.

§84.109. License Status.

§84.110. Fees.

§84.111. Implementation Provisions of Licensing.

§84.112. Effect of Criminal History Information on Applicants and Licensees.

§84.113. Crimes Directly Related to Fitness for License; Mitigating Factors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800963
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 936-7640

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SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§84.101 - 84.104

The Finance Commission of Texas (commission) proposes new §§84.101 - 84.104, concerning General Provisions, with regard to motor vehicle dealers licensed by the Office of Consumer Credit Commissioner.

The proposed new rules contain new operational provisions. The purpose of the new operational rules is to conform the commission's rules to current practice, to provide clarification for licensees required to comply with the rules, and to enhance enforcement efforts. The following paragraphs outline the individual purposes of each proposed rule.

Section 84.101 sets out the purpose and scope of the chapter.

Section 84.102 (some definitions contained in current §84.204, some new definitions) outlines general definitions to be used throughout the chapter in order to ensure consistent treatment and application of defined terms. The new definitions are intended to provide clarification for licensees and to enhance enforcement and compliance efforts.

Section 84.103 provides for the responsibility of licensees for the acts of their agents.

Section 84.104 requires that each officer, director, employee, and agent of a licensee have a working knowledge of the laws and regulations applicable to the licensee's business.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of the new rules will be that the commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There is no anticipated cost to persons who are required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513, grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.101. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 348.

(b) Scope.

(1) Retail sellers. This chapter applies to all persons engaged in the business of selling motor vehicles to retail buyers in transactions in which a retail buyer purchases a motor vehicle from a retail seller and agrees with the retail seller to pay part or all of the cash price in one or more deferred installments.

(2) Holders. This chapter applies to all persons that acquire or otherwise receive retail installment sales contracts unless specifically exempted by Texas Finance Code, Chapter 348.

§84.102. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Accrual method--A method to compute a finance charge and apply the finance charge to the unpaid principal balance. Both the true daily earnings method and the scheduled installment earnings method are accrual methods.

(2) Add-on method--A method for calculating a precomputed time price differential charge in which the retail buyer agrees to pay the total of payments. The total of payments includes both the principal balance of the contract and the time price differential charge. The add-on time price differential charge is calculated at the inception of the contract on the principal balance for the full term, as if the principal balance of the contract did not decline over the term of the contract.

(3) Contract rate--The annual time price differential rate that may be stated in a retail installment sales contract, and that accrues or is assessed against the principal balance that is subject to a finance charge for the term of the contract. The contract rate cannot exceed the daily rate converted to an annualized rate.

(4) Creditor--The seller or any subsequent holder or assignee of the retail installment sales contract.

(5) Daily rate--The rate authorized under Texas Finance Code, §348.105, or the simple rate equivalent of the rate applicable to the contract under Texas Finance Code, §348.104, computed on a daily basis using a 365-day calendar year.

(6) Default charge or late charge--The additional finance charge for a late payment on a contract.

(7) Deferment charge--The payment of an additional finance charge to defer the payment date of a scheduled payment on a contract.

(8) Irregular payment contract--A contract:

(A) that is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) the first scheduled installment of which is due later than one month and 15 days after the date of the contract.

(9) Licensee--Any person who has been issued a motor vehicle sales finance license pursuant to Texas Finance Code, Chapter 348.

(10) Principal balance subject to finance charge--The principal balance used in the determination or calculation of the time price differential charge.

(A) Sales tax advanced transaction--In a sales tax advanced transaction, the principal balance subject to a finance charge is computed by:

(i) adding:

(I) the cash price of the vehicle;

(II) the amount of the authorized itemized charges;

(III) sales tax;

(IV) an authorized and properly disclosed documentary fee;

(V) an amount authorized under Texas Finance Code, §348.404(b); and

(ii) subtracting from the results under clause (i) of this subparagraph the amount of the retail buyer's down payment in money, goods, or both.

(B) Sales tax deferred transaction--In a sales tax deferred transaction, the principal balance subject to a finance charge does not include the deferred sales tax. The principal balance subject to a finance charge is computed by:

(i) adding:

(I) the cash price of the vehicle (excluding sales tax);

(II) the amount of the authorized itemized charges (excluding sales tax);

(III) an authorized and properly disclosed documentary fee;

(IV) an amount authorized under Texas Finance Code, §348.404(b); and

(ii) subtracting from the results under clause (i) of this subparagraph the amount of the retail buyer's down payment in money, goods, or both.

(11) Regular payment contract--Any contract that is not an irregular payment contract.

(12) Scheduled installment earnings method--The scheduled installment earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled reduction in the unpaid principal balance. Under this method, a finance charge refund is calculated by deducting the earned finance charges from the total finance charges. If prepayment in full or demand for payment in full occurs between payment due dates, a daily rate equal to 1/365th of the annual rate is multiplied by the unpaid principal balance. The result is then multiplied by the actual number of days from the date of the previous scheduled installment through the date of prepayment or demand for payment in full to determine earned finance charges for the abbreviated period. In addition to the earned finance charges calculated in this paragraph, the creditor may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 fee for other vehicles, so long as the total of the earned finance charges and the acquisition fee do not exceed the finance charge disclosed in the contract. The creditor is not required to refund unearned finance charges if the refund is less than $1.00. The scheduled installment earnings method may be used with either an irregular payment contract or a regular payment contract. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(13) Sales tax advanced transaction--A retail installment transaction in which a retail seller remits the entire amount of the sales tax to the appropriate taxing authority within 20 working days of the sale.

(14) Sales tax deferred transaction--A retail installment transaction in which a retail seller or a qualified related finance company collects sales tax from the retail buyer and remits the tax under Tax Code, §152.047 to the Comptroller of Public Accounts.

(15) Seller--The seller of the motor vehicle.

(16) Sum of the periodic balances method (Rule of 78s).

(A) Under this method, the finance charge refund is calculated as follows:

(i) Subtract an acquisition fee not greater than $150 for a heavy commercial vehicle, or $25 for other vehicles, from the total finance charge.

(ii) Multiply the amount computed in clause (i) of this subparagraph by the refund percentage computed below. The result is the finance charge refund.

(iii) Compute the refund percentage by:

(I) Computing the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Dividing the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(B) As an alternative for heavy commercial vehicles, as defined in the Texas Finance Code, the sum of the periodic balances method may be computed as follows:

(i) Multiply the total finance charge by a refund percentage determined as follows:

(I) Compute the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(-a-) On the first day, after the date of the prepayment or demand for payment in full; that is, the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(-b-) If the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the date of the second scheduled payment of the contract occurring after the prepayment or demand;

(II) Divide the result in subclause (I) of this clause by the sum of all of the monthly balances under the contract's schedule of payments.

(ii) From the result derived in clause (i) of this subparagraph, deduct an acquisition fee not to exceed $150.

(C) The creditor is not required to give a finance charge refund if it would be less than $1.00.

(D) The sum of the periodic balances method may not be used with an irregular payment contract.

(17) True daily earnings method--The true daily earnings method is a method to compute the finance charge by applying a daily rate to the unpaid principal balance. The daily rate is 1/365th of the equivalent contract rate. The earned finance charge is computed by multiplying the daily rate of the finance charge by the number of days the actual unpaid principal balance is outstanding. Payments are credited as of the time received; therefore, payments received prior to the scheduled installment date result in a greater reduction of the unpaid principal balance than the scheduled reduction, and payments received after the scheduled installment date result in less than the scheduled reduction of the unpaid principal balance. The computation of finance charges must comply with the U.S. rule as defined in Appendix J of 12 C.F.R. Part 226 (Regulation Z).

(18) U.S. Rule--The ruling of the United States Supreme Court in Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to finance charge and any remainder reduces the principal. Under this rule, ac-

crued but unpaid finance charge cannot be added to the principal and interest cannot be compounded.

(19) Vehicle--A motor vehicle as defined by Texas Finance Code, §348.001(4).

§84.103. Responsibility for Acts of Agents.

A licensee is responsible for the acts and omissions of its officers, directors, employees, and agents in the conduct of the licensee's business.

§84.104. Knowledge of Laws and Regulations Required.

Each officer, director, employee, and agent of a licensee shall have a working knowledge of Texas Finance Code, Chapter 348, its implementing regulations, and other pertinent state and federal statutes and regulations that apply to the licensee's business. This section applies to the listed parties to the extent that the individual has contact with retail buyers or potential retail buyers, or has responsibility for compliance with Texas Finance Code, Chapter 348, or other laws or regulations governing the licensee's business.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800965
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 936-7621

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SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.201 - 84.208, 84.210

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined at the Office of Consumer Credit Commissioner or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (commission) proposes the repeal of 7 TAC Chapter 84, Subchapter B, §§84.201 - 84.208, and 84.210, concerning Installment Sales Contract Provisions. The commission has determined that these rules more effectively belong in different locations within Chapter 84 in order to better track the organization of Texas Finance Code, Chapter 348. Therefore, these rules are being proposed for repeal; and new (relocated) rules are proposed elsewhere in this issue of the *Texas Register*. Due to pending amendments, §84.209 will be relocated as a part of rule proposals in the near future.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Commissioner Pettijohn also has determined that, for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for lenders and consumers. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed repeal is published in the *Texas Register*. At the conclusion of the 31st day after the proposed repeal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513, authorizes the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Finance Code, Chapter 348.

§84.201. Purpose.
§84.202. Non-Standard Contract Filing Procedures.
§84.203. Relationship with Federal Law.
§84.204. Definitions.
§84.205. Disclosures and Contract Provisions Required by the Texas Finance Code.
§84.206. Other Disclosures Required by Commission Rule.
§84.207. Format.
§84.208. Contract Provisions.
§84.210. Permissible Changes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

7 TAC §84.401

The Finance Commission of Texas (commission) proposes new §84.401, concerning Acquisition of Contract or Balance, with regard to motor vehicle dealers licensed by the Office of Consumer Credit Commissioner.

The proposed new rule contains a new operational provision. The purpose of the new rule is to conform the commission's rules to current practice, to provide clarification for licensees required to comply with the rules, and to enhance enforcement efforts.

Section 84.401 outlines a person's authority to acquire a retail installment contract or an outstanding balance, requiring either a license or exemption under Texas Finance Code, Chapter 348.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the proposed new rule is in effect, there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn has determined that, for each year of the first five years the proposed new rule is in effect, the public benefit anticipated as a result of the new rule will be that the commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. There is no anticipated cost to persons who are required to comply with the rule as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed rule is published in the *Texas Register*. At the conclusion of the 31st day after the proposed rule is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

This new section is proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513, grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

This rule affects Texas Finance Code, Chapter 348.

§84.401. Acquisition of Contract or Balance.

A person may not acquire a retail installment sales contract or an outstanding balance under a retail installment sales contract unless the person holds a license under Texas Finance Code, Chapter 348 or is exempt from licensing under Texas Finance Code, Chapter 348.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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SUBCHAPTER F. LICENSING

7 TAC §§84.601 - 84.616

The Finance Commission of Texas (commission) proposes new Subchapter F, §§84.601 - 84.616, concerning Licensing, with regard to motor vehicle dealers licensed by the Office of Consumer Credit Commissioner.

These proposed new rules regarding licensing are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be easier to find in a more logical location and order which better tracks the organization of Texas Finance Code, Chapter 348. The relocated rules are substantially similar to the rules pending repeal, as found in 7 TAC §§84.101 - 84.113, concerning Sales Finance Licenses. The commission's proposed repeal of these sections is published elsewhere in this issue of the *Texas Register*.

The agency is also proposing two new rules within the relocated Licensing subchapter (Subchapter F): §84.615, concerning Applications and Notices as Public Records, and §84.616, concerning License Display.

With regard to the relocated licensing rules (§§84.601 - 84.616; current Subchapter A, new Subchapter F), some of the provisions within the rules have been reorganized and refined in order to better group information that is part of the license application, with a separate grouping for other filings submitted with the application (e.g., fingerprints, loan forms, entity documents). In addition, the references to paper forms have been eliminated; and the acceptance of approved alternative formats or electronic submissions has been added throughout the licensing rules to modernize the application process and provide licensees with more options when completing the application.

The purposes of each relocated rule track the original purpose language used when each rule was originally adopted. Additional explanation is provided under sections where substantive changes in language have been incorporated into the proposed new rules. Any remaining changes to relocated sections consist of revisions to formatting, grammar, punctuation, spelling, section references, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule pending repeal to the new rule being proposed are technical and nonsubstantive in nature.

The following paragraphs outline the individual purposes of each proposed rule. New rules will include the designation "(new rule)" after the section number, while relocated rules will be listed with their current location "(current §84.XXX)" listed after the proposed new section number.

Section 84.601 (current §84.101) provides definitions to be used in the licensing subchapter.

Section 84.602 (current §84.102) describes the procedure for filing a new application for a motor vehicle sales finance license, including instructions regarding what forms to use, what information is necessary on the application, and what information must be filed with the application. Section 84.602 has been revised and reorganized to conform with the agency's current practice and also to streamline the application process.

Section 84.602(1)(C)(viii) has been added, clarifying that, if a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

The addition of clause (v) to §84.602(2)(A) specifically states that fingerprints must be submitted to the agency, regardless of whether an individual has previously submitted fingerprints to a different state agency, as statutory provisions require direct submission and prevent disclosure to others.

Section 84.602(2)(C)(ix) has been added and provides applicants with the option to submit a "certificate of formation" as defined in the Texas Business Organizations Code, as long as the certificate includes the required information for the applicant's business entity type.

Section 84.603 (current §84.103) outlines the procedures for licensees to add new registered offices.

Section 84.604 (current §84.104) describes the procedure for filing an application for transfer of a motor vehicle sales finance license, including the filing requirements.

Section 84.604 has been revised, with appreciable additions to clarify the circumstances for each entity type and situation as to when a transfer will be required. Subsections (d) and (e) of former §84.104 have been combined and revised into §84.604(d) in order to provide a more cohesive explanation of the requirements when one party is seeking permission to operate under another party's license.

Section 84.605 (current §84.105) describes what action the licensee must take when it changes the proportion of ownership in, or the form of, the licensed entity and lists the time frame within which the licensee must notify the commissioner.

Section 84.606 (former §84.107(a)) requires each applicant to supplement its application upon request by the agency.

Note that former §84.107 has been separated into two distinct rules, in order to distinguish between situations where the agency requests information to supplement an application and where the applicant has a duty to supplement its application as a result of changed circumstances. (See §84.607 which follows.)

Section 84.607 (former §84.107(b)) requires each applicant, upon discovery of new or changed information, to supplement its application within 10 days of discovery of the new or changed information.

Section 84.608 (current §84.106) describes how an application for a motor vehicle sales finance license is processed, including a description of when an application is complete as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Current §84.106(g) regarding applications and notices as public records has been removed from this section and is being proposed as new §84.615. Section 84.615 is being added as a separate section to maintain consistency throughout the rule chapters governing various licensees regulated by the agency.

Section 84.609 (current §84.108) describes the procedures for relocating a licensed office, including deadlines for notification to the commissioner.

Section 84.610 (current §84.109) describes how a licensee may change its license from active to inactive status and how a licensee may activate an inactive license. This section also clarifies the procedures for a licensee to voluntarily surrender its license, resulting in cancellation, as well as when a license will expire.

Subsections (c) and (d) have been revised, and subsection (e) has been added to §84.610 in order to clarify the procedures for a licensee to voluntarily surrender its license, resulting in cancellation, as well as when a license will expire.

Section 84.611 (current §84.110) sets out the fees for new licenses, license transfers, fingerprint processing, license amendments, license duplication, and cost of hearings.

Section 84.612 (current §84.111) states the implementation provisions of licensing.

Section 84.613 (current §84.112) describes the effect of criminal history information on applicants and licensees, including what information must be provided on arrests, charges, indictments, and convictions. As per Texas Occupations Code, §53.022, subsection (c) of the rule outlines the factors the agency will consider in determining whether a conviction relates to the occupation of being a motor vehicle sales finance dealer.

Section 84.614 (current §84.113) is a companion rule to §84.613. Section 84.614 describes the crimes directly related to the fitness for holding a license, as well as mitigating factors that will be considered, as per Texas Occupations Code, §53.023.

Section 84.615 (new section; current §84.106(g)) states that, upon filing with the Office of Consumer Credit Commissioner, an application for a motor vehicle sales finance license or a notice submitted by an applicant or licensee becomes a state record and public information subject to the Texas Public Information Act. Section 84.615 is being added as a separate section to maintain consistency throughout the rule chapters governing various licensees regulated by the agency. Section 84.615 is modeled after several current regulations (i.e., §§83.311, 85.212, 85.307, 88.108, and 89.311).

Section 84.616 (new rule) explains the requirement for displaying licenses. Section 84.616 is being added in order to conform with current practice and to maintain consistency throughout the rule chapters governing various licensees for which license display is required. Section 84.616 is modeled after current §83.402 and §89.402.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of the relocated rules will be enhanced compliance with the credit laws and consistency in credit contracts. Commissioner Pettijohn also has determined that, for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the changes from the previously enacted version of the relocated rules, as well as the addition of the new rules, will be that the commission's rules will conform to current practice, will be more easily understood by licensees required to comply with the rules, and will be more easily enforced. A person required to comply with the rules will be responsible for paying the regulatory fees provided in §84.611 of the proposed rules, as currently required by §84.110. Aside from this continuance of current licensing fees, there is no anticipated cost to persons who are required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written

comment must be received on or before the 31st day after the date the proposed rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513, grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.601. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 348, have the same meanings as defined in Chapter 348. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Affiliate--A business entity directly or indirectly through one or more intermediaries that is under common control with the applicant or licensee.

(2) Applicant--An entity that has filed the required forms and fees to operate under a license from the Office of Consumer Credit Commissioner pursuant to Texas Finance Code, Chapter 348.

(3) Foreign entity--An entity formed under the laws of a jurisdiction other than the State of Texas.

(4) Licensed location--The central or main location of the entity.

(5) Principal party--An individual with a substantial relationship to the proposed business of the applicant. The following individuals are considered to be principal parties:

(A) proprietors, to include spouses with community property interest;

(B) general partners;

(C) officers of privately-held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, and those with substantial responsibility for operations or compliance with Texas Finance Code, Chapter 348;

(D) directors of privately-held corporations;

(E) individuals associated with publicly-held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this section (as if the corporation was privately-held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 348. One of the persons designated shall be responsible for assembling and providing the information required on behalf of the applicant and shall sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) trustees and executors;

(H) officers of nonprofit organizations; and

(I) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

(6) Privately-held corporation--A corporation that is not publicly-held.

(7) Publicly-held corporation--A corporation:

(A) subject to the registration provisions of the Securities Act of 1933 in order to allow a public offering of voting stock; or

(B) owned directly or indirectly by a parent corporation that is subject to the registration provisions of the Securities Act of 1933.

(8) Registered offices--Each location other than the licensed location where a licensee will originate, service, or collect on retail installment sales contracts subject to Texas Finance Code, Chapter 348. The term also includes any additional assumed name that the licensee uses at a single location to engage in a Chapter 348 transaction.

§84.602. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for Motor Vehicle Sales Finance License.

(i) Location. A physical street address must be listed for the applicant's proposed licensed location. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.

(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.

(I) If the applicant is a proprietor, each owner must sign.

(II) If the applicant is a partnership, each general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(VI) If the applicant is a nonprofit organization, an authorized officer must sign.

(B) List of Registered Offices for a Motor Vehicle Sales Finance License. Each additional location, other than the licensed location shown on the Application for Motor Vehicle Sales Finance License, must be listed. The applicant should provide the assumed name (DBA), physical address, telephone number, and the person responsible for day-to-day operations for each registered office. A registered office is required for any additional assumed name that the licensee

uses at a single location to engage in a Texas Finance Code, Chapter 348 transaction.

(C) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnerships. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 5% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporations. Each officer and director must be named. Each shareholder holding 5% or more of the voting stock must be named if the corporation is privately-held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(v) Limited liability companies. Each "manager," "officer," and "member" owning 5% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 5% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(vi) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(vii) Nonprofit organizations. Each officer must be listed.

(viii) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

(D) Application Questionnaire. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(E) Appointment of Statutory Agent and Consent to Service. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(F) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §84.601 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

(G) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §84.601 of this title must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(H) Employment History. Each individual meeting the definition of "principal party" as defined in §84.601 of this title must provide an employment history. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(I) Statement of Experience. Each applicant should provide information that relates to the applicant's prior experience in the motor vehicle sales finance business. If the applicant or its principal parties do not have significant experience in the same type of business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(J) Business Operation Plan. An applicant must attach a brief narrative to the application explaining:

(i) an estimate of how many motor vehicles will be financed by the applicant each year;

(ii) whether the applicant will hold the retail installment sales contracts or whether the applicant will assign its retail installment sales contracts;

(iii) whether the applicant will only be accepting contracts from another entity (assignor), and, if so, list the types of entities; and

(iv) whether the collections will occur at the licensed location.

(K) Statement Regarding Previous Installment Transactions. Each applicant must submit a statement that it has or has not made or collected on any retail installment sales contract or accepted the cash payment for a motor vehicle in one or more installments from September 1, 2002, to date. This includes any contracts signed by applicant as seller that are subsequently assigned to a third party. If the applicant is purchasing another dealership and has permission to operate under an existing license, as described in §84.604 of this title (relating to Transfer of License), the statement outlined by this subparagraph is not required. If the applicant has engaged in any of the referenced activities, the applicant must provide the following information:

(i) A list of all contracts used to finance the sale of a motor vehicle in one or more installments (whether the applicant was the original seller or whether the applicant became a holder). The list should include the name of the buyer, contract date, vehicle cash price, amount of down payment, net trade-in amount, total amount financed, payment frequency (monthly, semi-monthly, bi-weekly, weekly), total number of payments, and payment amount(s).

(ii) From the list provided by the applicant, copies of ten (10) complete files. The complete file includes, but is not limited to, the buyer's order, signed retail installment sales contract, payment history, certificate of title, and other documents related to that transaction. If there are fewer than ten (10) accounts, provide a complete copy of each file.

(L) Assumed Name Certificate. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), an Assumed Name Certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.10, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.11, as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §84.601 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (1)(C)(iii)(I) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are not required.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Transportation), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002, as amended.

(B) Contract forms. The applicant must provide information regarding the retail installment sales contract forms it intends to use.

(i) Custom forms. If a custom contract form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(C) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of incorporation and any amendments;

(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the corporation identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly-held corporations. In addition to the items required for corporations, a publicly-held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(III) a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the company identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of company meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the company identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide:

(I) a certificate of authority to do business in Texas, if applicable; and

(II) a statement of where records of Texas retail installment transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.

(viii) Nonprofit organizations. The applicant must provide a copy of the relevant portions of the instrument creating the nonprofit organization addressing management of the organization and operations of the applicant. A nonprofit applicant must also provide a copy of its filing with the Internal Revenue Service or other evidence to verify that the applicant is a nonprofit organization exempt from taxation under Internal Revenue Code of 1986, §501(c)(3).

(ix) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.

(3) Late filing. An applicant who desires to retroactively file a license application may do so by complying with Texas Finance Code, §349.303, and the rules adopted under this chapter.

§84.603. New Registered Offices.

(a) A licensee may conduct Texas Finance Code, Chapter 348 transactions at different locations or under additional assumed names at a single location by filing a Notice of New Registered Office and paying the applicable fee.

(b) The Notice of New Registered Office must be filed before a licensee can engage in a Chapter 348 transaction at the different location or under the additional assumed name.

(1) Date registered office began conducting Chapter 348 transactions. If the registered office has commenced business, provide the date the registered office began conducting Texas Finance Code, Chapter 348 transactions. If the notice is filed in advance, provide the date the licensee anticipates commencing business under this registered office.

(2) License number of licensed location. Provide the license number shown on the license of the licensed location issued by the Office of Consumer Credit Commissioner.

(3) Assumed Name Certificate. If the registered office is using an assumed name, as that term is defined in Texas Business & Commerce Code, §36.02(7), an Assumed Name Certificate must be filed as provided in this paragraph.

(A) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name at a new registered office must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.10, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(B) Incorporated applicants. Incorporated applicants using or planning to use an assumed name at a new registered office must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.11, as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(c) Late filing. A licensee who desires to retroactively register an office may do so by complying with Texas Finance Code, §349.302, and the rules adopted under this chapter.

§84.604. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §84.605 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(3) any change in ownership of a licensed limited partnership interest:

(A) in which a limited partner owning 10% or more relinquishes that owner's entire interest;

(B) in which a new limited partner obtains an ownership interest of 10% or more;

(C) in which a general partner relinquishes that owner's entire interest; or

(D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately-held corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately-held corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately-held corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly-held corporation;

(5) any change in the membership interest of a licensed limited liability company:

(A) in which a new member obtains an ownership interest of 10% or more;

(B) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(C) in which a purchase or acquisition of control of 51% or more of any company which is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of subsection (a)(1) - (6) of this section, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No motor vehicle sales finance license may be sold, transferred or assigned without written approval by the commissioner.

(c) Filing requirements. An application for transfer of a motor vehicle sales finance license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §84.602 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §84.602 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the Application for Motor Vehicle Sales Finance License, Application Questionnaire, Disclosure of Owners and Principal Parties, Appointment of Statutory Agent and Consent to Service, and List of Registered Offices for a Motor Vehicle Sales Finance License. The instructions in §84.602 of this title are applicable to these filings. Other information required by §84.602 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(2) Evidence of transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(d) Permission to operate. No business under the license shall be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the transferee the authority to operate under the transferor's license pending approval of the transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the transferee in connection with the operation of the business. The permission to operate must be submitted before the transferee takes control of the licensed operation. The agreement shall set a definite period of time for the transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

§84.605. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from proprietorship to corporation; or from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 10 calendar days by filing the appropriate transfer application documents as provided in §84.604 of this title (relating to Transfer of License). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of incorporation; or articles of conversion and partnership agreement) addressing the ownership and management of the new entity. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §84.604 of this title. A merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity requires a transfer application pursuant to §84.604 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days. Failure to meet the application filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership. This subsection does not apply to a publicly-held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly-held parent corporation, although a transfer application may be required under §84.604 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §84.604 of this title.

(3) Failure to meet the notification filing deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

§84.606. Amendments to Pending Application.

Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

§84.607. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported within 10 calendar days after the person has knowledge of the action, fact or information.

§84.608. Processing of Application.

(a) Initial review. A response to an application will ordinarily be made within 14 calendar days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and §9.1 *et seq.* of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee shall be refunded to the applicant. The investigation fee and the fingerprint processing fee in §84.611 of this title (relating to Fees) shall be forfeited.

(f) Processing time.

(1) A license application will ordinarily be approved or denied within a maximum of 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing shall be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application shall be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§84.609. Relocation of Licensed Offices.

(a) Relocation of licensed location. A licensee may move a licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 10 calendar days prior to the anticipated moving date.

(b) Relocation of registered office. A licensee may move a registered office from the registered location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 10 calendar days prior to the anticipated moving date.

(c) Notice requirements. The notice must include the contemplated new address of the licensed location or registered office and the approximate date of relocation. Failure to meet the notification deadline does not invalidate transactions unless the agency has obtained a contrary finding through the administrative process.

§84.610. License Status.

(a) Inactivation of active license. A licensee may cease operating under a motor vehicle sales finance license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 10 calendar days prior to the anticipated inactivation date. Registered offices will be designated as closed when a license is inactivated. Notification must be filed on the Amendment to Motor Vehicle Sales Finance License or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §84.611 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 10 calendar days prior to the anticipated activation date. Registered offices must be listed and appropriate fees paid upon activation of a license. Notification must be filed on the Amendment to Motor Vehicle Sales Finance License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §84.611 of this title.

(c) Voluntary surrender of license. Subject to subsection (e) of this section, a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate. A voluntary surrender will result in cancellation of the license.

(d) Expiration. A license will expire on July 31 unless a fee is paid by the due date for license renewal. A licensee that pays the annual assessment fee will automatically be renewed even though a new license may not be issued.

(e) Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC.

§84.611. Fees.

(a) New licenses.

(1) Investigation fees. A $100 non-refundable investigation fee is assessed each time an application for a new license is filed.

(2) Registered office fees. The fee for each registered office is $25.

(b) License transfers. An applicant must pay a non-refundable investigation fee of $100 for the transfer of a license.

(c) Fingerprint processing. The non-refundable fee to investigate each applicant's fingerprint record is $40 per set. This fee must be paid for each set of fingerprints filed with an application for a new license or a license transfer.

(d) License amendments.

(1) License amendment fees. A fee of $25 must be paid each time a licensee seeks to amend a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating a licensed location.

(2) Registered office amendment fees. The fee for amending or relocating a registered office is $10.

(e) Annual renewal and examination assessments.

(1) An annual renewal fee is required for each licensee consisting of:

(A) a licensed location fee of $75;

(B) a registered office fee of $10 per location; and

(C) a variable fee based upon the annual dollar volume of contracts originated or acquired during the preceding calendar year.

(2) The maximum annual assessment for each active license shall be no more than $250 excluding the registered office fees.

(f) Licensed location or registered office duplicate certificates. The fee for a duplicate certificate is $10.

(g) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §84.608 of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

§84.612. Implementation Provisions of Licensing.

(a) Effective date. The effective date of the statutory licensing requirement is September 1, 2002. After September 1, 2002, a motor vehicle seller may not engage in any retail installment sales transaction without a motor vehicle sales finance license granted under this title. Any motor vehicle seller engaging in a motor vehicle sales finance transaction prior to September 1, 2002, must comply with Texas Finance Code, §348.401 and §348.402, and 7 TAC, Part 1, Chapter 1, Subchapter P, as those provisions were in effect. Failure to comply with previously required registration provisions is grounds for denial of an application made under §84.608 of this title (relating to Processing of Application).

(b) Securitization of transactions. In the case of securitized transactions, such as a transaction in which motor vehicle retail installment sales contracts are held in trust or similar structure with participatory interests in the structure transferred to investors, the licensing requirements may be fulfilled either by the trust or other securitization entity or by the servicer that is responsible for servicing the contracts included in the securitized entity.

§84.613. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character and the information gathered is relevant to the licensing or enforcement action decision as described below.

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions must be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (d) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the principal party of the applicant has maintained a record of steady employment, has supported the principal party's dependents, and has otherwise maintained a record of good conduct. At a minimum, the principal party must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects negatively on an applicant's honesty and moral character.

(c) Factors in determining whether conviction relates to occupation of motor vehicle sales finance dealer. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner shall consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the principal party previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(d) Effect of criminal conviction on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 348. For purposes of this section, the crimes listed below are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;

(B) Breach of trust or other fiduciary duty;

(C) Dishonesty or theft;

(D) Assault;

(E) Violation of a statute governing lending of this or another state;

(F) Failure to file a required report with a governmental body, or filing a false report;

(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes; or

(H) Attempt, preparation, or conspiracy to evade Texas Finance Code, Chapter 348 and its provisions.

(2) Effect of other criminal convictions. The commissioner may deny an application for a license, or revoke an existing license if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a motor vehicle sales finance dealer who originates or obtains retail installment sales contracts written under Texas Finance Code, Chapter 348. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §84.614 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§84.614. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining retail installment sales contracts made under Texas Finance Code, Chapter 348 involves or may involve making representations to borrowers regarding the terms of retail installment sales contracts, maintaining accounts for retail installment sales contracts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and maintaining accurate vehicle title records. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, a crime involving failure to file a governmental document or filing a false document, or a crime involving the use or threat of force against another person, is a crime directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner shall consider, in addition to the factors listed in §84.613 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the following factors, as specified in Texas Occupations Code, §53.023:

(1) the extent and nature of the principal party's past criminal activity;

(2) the age of the principal party at the time of the commission of the crime;

(3) the time elapsed since the principal party's last criminal activity;

(4) the conduct and work activity of the principal party prior to and following the criminal activity;

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party, the sheriff or chief of police in the community where the principal party resides, and other persons in contact with the convicted principal party.

§84.615. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a motor vehicle sales finance license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

§84.616. License Display.

Licenses must be prominently displayed in a licensee's office in a conspicuous location visible to the general public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800967
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 936-7621

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SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §§84.801 - 84.807, 84.809

The Finance Commission of Texas (commission) proposes new §§84.801 - 84.807 and 84.809, concerning Retail Installment Sales Contract Provisions, with regard to motor vehicle dealers licensed by the Office of Consumer Credit Commissioner.

These rules regarding retail installment sales contract provisions are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be easier to find in a more logical location and order which better tracks the organization of Texas Finance Code, Chapter 348. The relocated rules are substantially similar to the rules pending repeal, as found in §§84.201 - 84.208 and 84.210, concerning Installment Sales Contract Provisions. The commission's proposed repeal of these sections is published elsewhere in this issue of the *Texas Register*.

The rules implement the provisions of Texas Finance Code, §341.502, which require contracts under Chapter 342 or 348, whether in English or in Spanish, to be written in plain language. Use of the model contact is optional; however, should a licensee choose not to use the model contract, or a contract comprised of model clauses, then the licensee's non-standard contract must be submitted to the agency in accordance with the provisions of new 7 TAC §84.802. Additionally, due to pending amendments, §84.209, Model Clauses, will be relocated as a part of rule proposals in the near future.

The purposes of each relocated rule track the original purpose language used when each rule was originally adopted. Aside

from corrections to section references, these rules regarding retail installment sales contract provisions (from current Subchapter B, new Subchapter H) are merely being relocated without changes.

The following paragraphs outline the individual purposes of each proposed rule. The relocated rules will include their current location "(current §84.XXX)" listed after the proposed new section number.

Section 84.801 (current §84.201) sets forth the purpose clause and discusses the benefits of plain language contracts. Section §84.801 explains the motor vehicle model contract provisions and states the intention that the provisions should constitute a complete plain language motor vehicle retail sales installment contract. Established model contract provisions encourage uniformity and provide benefits to consumers by making contracts easier to understand. A creditor is not limited to the contract provisions contained in these rules and retains flexibility to design contract forms suitable for the creditor's use. These multi-purpose contract provisions are intended for use by franchised dealers, independent dealers, holders of motor vehicle retail installment sales contracts, and individuals who sell less than five motor vehicles per year.

Section 84.802 (current §84.202) provides the procedures for licensees to submit non-standard contract submissions to the agency.

Section 84.803 (current §84.203) explains the relationship of federal law to the state requirements. The section describes how any conflicts or inconsistencies shall be resolved.

Section 84.804 (current §84.205) outlines the disclosure and contract provisions required by the Texas Finance Code.

Section 84.805 (current §84.206) outlines the disclosures required by Finance Commission rule.

Section 84.806 (current §84.207) details the required format, typeface, and font for model plain language motor vehicle retail installment sales contracts. The rule attempts to establish minimum allowable type sizes and typefaces. The rule also permits flexibility for labeling contracts through the use of titles and headings. The creditor has considerable flexibility in the formatting and arrangement of the information contained in the model clauses. The requirements are necessary to ensure that the contract will be easy for consumers to read and understand.

Section 84.807 (current §84.208) identifies the types of provisions that are typically included in a Chapter 348 motor vehicle retail installment sales contract. Creditors may determine which provisions are most applicable for their transactions. Creditors may omit provisions that are not applicable to a particular transaction. If a creditor desires to assess certain charges or exercise certain rights under the provisions, the creditor must contract for that fee or right. For example, if a creditor desires to assess a late charge, the creditor must provide for a late charge provision. Also, if a creditor desires to purchase collateral protection insurance because the buyer failed to keep required insurance, the creditor must include a contractual provision permitting the creditor to purchase the required insurance.

Section 84.809 (current §84.210) outlines permissible changes that can be made to a contract and still comply with the model provisions. This section provides licensees with flexibility in using the model clauses. Licensees may use additional documents in connection with the model documents contained in this rule. If a licensee incorporates additional documents, these additions may need to be submitted as non-standard forms if they do not employ the model clauses. Certain documents like the odometer statement, buyer's order, title application documents, notices to co-signer, buyer's guides, and similar documents do not need to be submitted as non-standard forms. Additional documents such as arbitration agreements, conditional delivery agreements, and guarantor agreements will need to be submitted for a readability review in accordance with new 7 TAC §84.802.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of the relocated rules will be enhanced compliance with the credit laws and consistency in credit contracts. There is no anticipated cost to persons who are required to comply with the rules as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the Finance Commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

These rules affect Texas Finance Code, Chapter 348.

§84.801. Purpose.

(a) The purpose of this subchapter is to provide model provisions and a model plain language contract in English for Texas Finance Code, Chapter 348 motor vehicle installment sales contract provisions. The establishment of model provisions for these transactions will encourage the use of simplified wording that will ultimately benefit consumers by making these contracts easier to understand. Use of the "plain language" model contract by a seller is not mandatory. The seller, however, may not use a contract other than a model contract unless the seller has submitted the contract to the commissioner in compliance with §84.802 of this tile (relating to Non-Standard Contract Filing Procedures). The commissioner shall issue an order disapproving the contract if the commissioner determines the contract does not comply with this section or rules adopted under this section. A seller may not claim the commissioner's failure to disapprove a contract constitutes approval.

(b) These provisions are intended to constitute a complete plain language motor vehicle installment sales contract; however, a seller is not limited to the contract provisions contained in these rules.

§84.802. Non-Standard Contract Filing Procedures.

(a) Non-standard contracts. A non-standard contract is a contract that does not use the model contract provisions. Non-standard contracts submitted in compliance with the provisions of Texas Finance

Code, §341.502(c) will be reviewed to determine that the contract is written in plain language. Non-standard contracts submitted for review may gain certain protections under the provisions of Texas Finance Code, §341.502.

(b) Certification of readability. Contract filings subject to this chapter must be accompanied by a certification signed by an officer of the creditor or the entity submitting the form on behalf of the creditor. The certification must state that the contract is written in plain language (i.e., that the contract can be easily understood by the average consumer). The certification must also state that the contract is printed in an easily readable font and type size.

(c) Filing requirements. Contract filings must be identified as to the transaction type. Contract filings must be submitted on paper that is suitable for permanent record storage and imaging. Handwritten forms or handwritten corrections will not be accepted. In addition to the paper submission, the licensee must also submit the contract filings in an electronic version. The electronic version must be submitted in a Corel WordPerfect (.wpd), MS Word (.doc), or a text (.txt) format.

(d) Contact person. One person shall be designated as the contact person for each filing submitted. Each submission should provide the name, address, phone number, and fax number, if available, of the contact person for that filing. If the contracts are submitted by anyone other than the company itself, the contracts must be accompanied by a dated letter which contains a description of the anticipated users of the contracts and designates the legal counsel or other designated contact person for that filing.

§84.803. Relationship with Federal Law.

(a) The disclosure requirements of 12 C.F.R. Part 226 (Regulation Z) adopted under the Truth in Lending Act (15 U.S.C. §1601 et seq.) and specifically 12 C.F.R. §226.18(f), regarding variable rate disclosures, apply according to their terms to some retail installment transactions, as more fully provided in the Truth in Lending Act and federal Regulation Z.

(b) In the event of any inconsistency or conflict between the disclosure or notice requirements in these provisions and any current or future federal law, regulation, or interpretation, the requirements of the federal law, regulation, or interpretation will control to the extent of the inconsistency.

(c) The term "time price differential" may be substituted for the term "finance charge" as used in the model disclosures provided by this regulation, except in those instances where use of that term would be prohibited by controlling federal law, regulation, or interpretation.

(d) The term "amount financed" may be substituted for "principal balance" whenever the amount financed, computed in accordance with federal Regulation Z, is the same as the principal balance computed in accordance with the Texas Finance Code.

(e) The term "annual percentage rate" may be substituted for "annual rate" or "contract rate" whenever the annual percentage rate, computed in accordance with federal Regulation Z, is the same as the annual rate computed in accordance with the Texas Finance Code.

§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.

The contract shall have the following disclosures and provisions, as applicable:

(1) The consumer warning required by Texas Finance Code, §348.102(d).

(2) The cash price as required by Texas Finance Code, §348.102(a)(5). The cash price may be disclosed as a separate item in the Itemization of Amount Financed or elsewhere in the contract. The cash price is the price at which the seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction.

(3) The amount of any downpayment, specifying the amounts paid in money and in goods traded in, as required by Texas Finance Code, §348.102(a)(6). An amount paid by the seller under Texas Finance Code, §348.404 to retire an amount owed (including amounts owed under a vehicle lease) against a motor vehicle used as a trade-in ("payoff") may be disclosed in several ways. The approaches outlined in the Regulation Z Staff Commentary, as from time to time updated, are permissible.

(4) Itemized charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may include, but are not limited to, the following charges as applicable:

(A) State inspection fee;

(B) Documentary fee;

(C) Dealer's inventory tax;

(D) Sales tax;

(E) Other taxes not included in the cash price (the seller may disclose one aggregate amount for all taxes or may separately itemize one or more of the taxes);

(F) Deputy service fee;

(G) Title fee;

(H) License fee;

(I) Vehicle property insurance;

(J) Credit life and credit disability insurance;

(K) GAP insurance, as authorized by Texas Finance Code, §348.208(b)(4);

(L) Theft protection plan;

(M) Service contract; or

(N) Warranty contract.

(5) The insurance statement required by Texas Finance Code, §348.204.

(6) Notice of exclusion of bodily injury and property damage insurance, if excluded, as required by Texas Finance Code, §348.205.

(7) Any documentary fee charged must be separately disclosed, either in the itemization or elsewhere, along with the description required by Texas Finance Code, §348.006 in reasonable proximity to the disclosure of the documentary fee. Any foreign language translation of this disclosure that is required under Texas Finance Code, §348.006 may be given in a separate document.

(8) A disclosure that the buyer may refinance the final scheduled payment upon the terms previously agreed or for any other period of time and payment schedule to which the buyer and holder may agree for a contract described in Texas Finance Code, §348.123(b)(5).

§84.805. Other Disclosures Required by Commission Rule.

(a) The consumer credit commissioner notice required by §86.101 of this title (relating to Consumer Notifications) must be disclosed.

(b) In a contract using the true daily earnings method, a brief description of the method of earning finance charge must be given.

In a contract using the scheduled installment earnings method or the sum of the periodic balances method of refunding precomputed finance charges, the name of the method used must be given, and at the creditor's option, a description of that method may be given. If in the same contract form, the creditor uses the scheduled installment earnings method in certain circumstances and the sum of the periodic balances method in other circumstances, the creditor shall provide a brief description of the circumstances under which each method will be used, along with the name of the method.

§84.806. Format.

(a) Plain language contracts must be printed in an easily readable font and type size pursuant to Texas Finance Code, §341.502(a). If other state or federal law requires a different type size for a specific disclosure or contractual provision, the type size specified by the other law should be used.

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include Times, Scala, Caslon, Century Schoolbook, Helvetica, Arial, and Garamond.

(c) Titles, headings, subheadings, numbering, captions, and illustrative or explanatory tables or sidebars may be used to distinguish between different levels of information or to provide emphasis.

(d) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Times typeface for visual comparative purposes. Use of a larger typeface is encouraged. The typeface for the federal disclosure box or other disclosures required under federal law must be legible, but no minimum typeface is required. Generally, the typeface for the remainder of the contract must be at least as large as 8 point in the Times typeface. A point is generally viewed as 1/72nd of an inch.

(e) The model clauses may be arranged in any order. Additionally, the seller has considerable flexibility in the formatting and arrangement of the information contained in the model clauses.

§84.807. Contract Provisions.

A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may include the following contract provisions to the extent not prohibited by law or regulation. If the seller desires to assess certain charges or exercise certain rights under one of the following provisions, except provisions relating to default, repossessions, acceleration, and assignment of the contract, the seller must include the provision in the contract. A seller may delete inapplicable provisions. A seller who does not desire to apply a provision is not required to include it in the contract. For example, the seller may omit the balloon payment provisions if there is no balloon payment. A seller may also exclude non-relevant portions of a model clause. For example, a seller who does not routinely finance certain insurance coverages may omit those non-applicable portions of the model clause. A Texas Finance Code, Chapter 348 motor vehicle installment sales contract may contain the following provisions:

(1) Identification of the parties, including the name and address of each party and specifying the pronouns that designate the buyer and the seller;

(2) An assignment of contract provision;

(3) A buyer's affirmation and promise to pay provision;

(4) An inspection acknowledgment provision;

(5) An identification of the motor vehicle;

(6) A description of the trade-in vehicle;

(7) A Truth in Lending Act (TILA) disclosure box;

(8) An itemization of amount financed box;

(9) A documentary fee notice provision;

(10) A deferred downpayments provision;

(11) A required physical damage insurance provision;

(12) Optional insurance coverages provision;

(13) Optional credit life and accident and health insurance provision;

(14) A liability insurance provision;

(15) A provision prohibiting oral modification of the contract;

(16) A provision stating the finance charge earnings method;

(17) A consumer warning provision;

(18) A buyer's acknowledgment of receipt of the retail installment contract as permitted under Texas Finance Code, §348.112;

(19) Consumer credit commissioner notice;

(20) A provision stating the finance charge refund method;

(21) A provision describing the application of payments;

(22) A provision describing the effect of early and late payments;

(23) A provision providing for interest on any matured amount at any rate permitted by law;

(24) Balloon payment provisions;

(25) An agreement to keep the motor vehicle insured;

(26) An agreement authorizing the creditor to purchase required insurance if the buyer fails to keep the motor vehicle insured;

(27) Physical damage insurance proceeds provision;

(28) Returned insurance premiums and service contract charges provision;

(29) An application of credits provision;

(30) A transfer of rights provision;

(31) An agreement granting a security interest in collateral;

(32) Agreements regarding the use and transfer of the motor vehicle, including prohibiting unauthorized transfer and transfer of equity fee limitations;

(33) Agreements regarding the care of the motor vehicle, which may include: keeping the motor vehicle in good working order and repair; keeping the vehicle free from liens and encumbrances; not exposing the motor vehicle to seizure, confiscation, or other involuntary transfer; and repaying the creditor for any amounts paid to satisfy liens or encumbrances;

(34) Default rights and repossession provisions, including consequences of default, collection costs, late charges, buyer's right to redeem, disposition of the motor vehicle, cancellation of optional contracts, and acceleration;

(35) A waiver of any right to receive notice of the intent to accelerate or notice of acceleration;

(36) A provision describing a refund of unearned finance charge upon acceleration;

(37) An integration provision and severability clause;

(38) Provision expressing no waiver and limitations on creditor's rights and usury savings clause;

(39) A provision stating Texas law and federal law will apply to the contract;

(40) Disclaimer of express or implied warranties;

(41) Preservation of consumers' claims and defenses provision;

(42) Used car buyer's guide provision;

(43) A guarantee provision;

(44) An arbitration provision; and

(45) A negotiation and assignment provision.

§84.809. Permissible Changes.

(a) Creditors may make the following types of changes to the model clauses and the model contracts and may still be eligible for the defenses provided by Texas Finance Code, §349.101:

(1) Deleting inapplicable disclosures;

(2) Using a line for the consumer to initial, rather than a checkbox;

(3) Adding a signature line to the insurance disclosures to reflect joint policies;

(4) Substituting another term for "buyer," "seller," or "creditor" that has the same meaning, or use of pronouns such as "you," "we," and "us" or "it";

(5) Changing the person of the pronouns to refer to the seller as "I" or "me" and the buyer as "you" or "your";

(6) Substituting the word "vehicle" for the term "motor vehicle";

(7) Presenting the model clauses in any order, and combining or further segregating the model clauses;

(8) Inserting descriptive headings or number provisions;

(9) Changing the case of a word if otherwise permitted by the Texas Finance Code;

(10) Omitting references to different provisions for heavy commercial vehicles where the creditor elects to treat buyers of heavy commercial vehicles under the rules applicable to other vehicles;

(11) Moving provisions from one side of the form to the other and directing the buyer to see the other side, or placing all of the provisions on the same side of the form; or

(12) Changing any provision to comply with federal law.

(b) A sample model motor vehicle retail installment contract is presented in the following example.
Figure: 7 TAC §84.809(b)

(c) A contract may include other provisions that are not prohibited by law, but the other provisions must be submitted to the Office of Consumer Credit Commissioner for readability review before the creditor includes them.

(d) Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the buyer than those that would result from the use of a model clause.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800968
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 936-7621

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER L. INTENSIVE SUMMER PROGRAM GRANTS

19 TAC §§4.210 - 4.214

The Texas Higher Education Coordinating Board proposes new §§4.210 - 4.214, concerning Intensive Summer Program Grants. Specifically, these new sections will establish a pilot program to award grants to participating institutions to provide intensive academic instruction during the summer semester to promote college and workforce readiness to students identified as being at risk of dropping out of school or college.

Dr. Glenda Barron, Assistant Commissioner for Student Advancement and Private Institution Oversight, has determined that for each year of the first five years the new sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be the improvement of college readiness skills and the reduction of college drop out rate for at risk students enrolled in Intensive Summer Programs in institutions of higher education. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Glenda Barron, Assistant Commissioner of Student Advancement and Private Institution Oversight, at P.O. Box 12788, Austin, Texas 78711, or glenda.barron@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §29.098, which provides the Coordinating Board with the authority to establish, by rule, a pilot program to award grants to participating campuses to provide intensive academic instruction during the summer semester.

The new sections affect the Texas Education Code, §29.098.

§4.210. Purpose and Authority.

In accordance with the Texas Education Code, §29.098, the purpose of the Intensive Summer Program is to create pilot programs in which institutions of higher education provide intensive academic instruction for students who are identified as being at risk of dropping out of school or college. The areas for intensive instruction are English/language arts, mathematics, and science. The Intensive Summer Programs pilot will identify best practices and strategies that work to help prepare students for college and work force readiness.

§4.211. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Board--The Texas Higher Education Coordinating Board.

(2) Institution of higher education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(3) Intensive Summer Programs--A pilot program authorized by the Texas Legislature in the Texas Education Code, §29.098 under which participating institutions of higher education receive grants to provide intensive academic instruction in English/language arts, mathematics, and science to facilitate the student's transition from high school to a postsecondary institution.

(4) Applicant--An institution submitting a proposal in response to the Board's request.

§4.212. Eligible Students.

(a) A grant may be awarded to an institution of higher education for an Intensive Summer Program only if at least 50 percent of the students served in the program:

(1) have a score on the Scholastic Assessment Test (SAT) or American College Test (ACT) that is equal to a score less than the national mean score;

(2) have been awarded a grant under the federal Pell grant program;

(3) are at least 20 years of age on the date the student initially enrolls in the institution of higher education; or

(4) have enrolled or will initially enroll as a part-time student.

(b) The remaining 50 percent of students served by the program may include at-risk students as determined by:

(1) the criteria described in subsection (a) of this section;

(2) the Texas Success Initiative criteria as set forth in §§4.54, 4.57, and 4.59 of this title (relating to Exemptions/Exceptions; Minimum Passing Standards; and Determination of Readiness to Perform Freshman-Level Academic Coursework); or

(3) other indicators of college or workforce readiness or means of identifying a student as being at risk of dropping out of school or college as determined by the institution.

§4.213. Eligible Institutions.

To be eligible to participate in the pilot program, applicants shall:

(1) be a Texas public institution of higher education as defined in the Texas Education Code, §61.003(8); and

(2) meet all deadlines, requirements, and guidelines outlined in the Request for Proposals.

§4.214. Grant Administration.

(a) Notification. The Board will notify each applicant in writing of its selection or non-selection for participation in the pilot program.

(b) Program Evaluation. The Board will establish specific evaluation procedures and requirements for the pilot program in the Request for Proposals.

(c) Program funding. The Board will distribute funds for the Intensive Summer Program pilots to eligible public institutions of higher education selected by an evaluation process in the Request for Proposals and based on the following factors:

(1) the availability of funds which is contingent on appropriations made by the legislature for that purpose;

(2) funding limitations as set forth in the Texas Education Code, §29.098, that a grant awarded for Intensive Summer Programs may not exceed $750 for each participating student and must be matched by not less than $250 for each participating student in other federal, state, or local funds, including private donations; and

(3) uses of funding as set forth in the Texas Education Code, §29.098, that to the extent practicable, an institution of higher education shall create work-study opportunities for students enrolled in teacher preparation programs to assist in providing instruction in Intensive Summer Programs.

(4) The Board may revoke an institution's participation in the pilot program based on the following factors:

(A) noncompliance with requirements and assurances outlined in the Request for Proposals and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the Request for Proposals;

(D) failure to provide accurate, timely, and complete information as required by the Board to evaluate the effectiveness of the pilot program; and

(E) refusal to serve participants in Intensive Summer Programs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800849
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER B. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.21 - 21.30

The Texas Higher Education Coordinating Board proposes new §§21.21 - 21.30, concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons. Specifically, §§21.727 - 21.736 are being repealed and the sections are herein proposed as §§21.21 - 21.30.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of administering the sections will be consistent cross referencing to residency statutes. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The new sections affect Texas Education Code, §§54.0501 - 54.075.

§21.21. Authority and Purpose.

Texas Education Code, §54.075, requires the Board to adopt rules to carry out the purposes of Texas Education Code, Subchapter B, concerning the determination of resident status for tuition purposes.

§21.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Census date--The date in an academic term for which an institution is required to certify a person's enrollment in the institution for the purposes of determining formula funding for the institution.

(2) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(3) Core Residency Questions--The questions promulgated by the Board to be completed by a person and used by an institution to determine if the person is a Texas resident. For enrollments prior to the 2008 - 2009 academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the Texas Common Application, or the core questions set forth in current Board rules or posted on the Texas Higher Education Coordinating Board web site. The core questions to be used for enrollments for and after the 2008 - 2009 academic year shall be the core questions in the Texas Common Application or core questions posted on the Board web site.

(4) Dependent--A person who:

(A) is less than 18 years of age and has not been emancipated by marriage or court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986.

(5) Domicile--A person's principal, permanent residence to which the person intends to return after any temporary absence.

(6) Eligible for Permanent Resident Status--A person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action by USCIS showing that his or her I-485 has been reviewed and has not been rejected.

(7) Established a domicile in Texas--A person has established a domicile in Texas if he or she has met the conditions shown in §21.24(d) of this title (relating to Determination of Resident Status).

(8) Eligible Nonimmigrant--A person who has been issued a type of nonimmigrant visa by the USCIS that permits the person to establish a domicile in the United States.

(9) Financial need--An economic situation that exists for a student when the cost of attendance at an institution of higher education is greater than the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.

(10) Gainful employment--Activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home). A person who is self-employed, employed as a homemaker, or who is living off his/her earnings may be considered gainfully employed for purposes of establishing residency, as may a person whose primary support is public assistance.

(11) General Academic Teaching Institution--The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University--Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; The University of Texas at Brownsville; Texas A&M University--Commerce; San Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; and The University of Texas at Tyler, and as defined in Texas Education Code, §61.003(3).

(12) Institution or institution of higher education--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(13) Legal guardian--A person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(14) Maintain a residence--To physically reside in a location. The maintenance of a residence is not interrupted by a temporary absence from the state, as provided in §21.24(e) of this title (relating to Determination of Resident Status).

(15) Managing conservator--A parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(16) Nonresident tuition--The amount of tuition paid by a person who does not qualify as a Texas resident under this subchapter unless such person qualifies for a waiver program under §21.29 of this title (relating to Waiver Programs for Certain Nonresident Persons).

(17) Nontraditional secondary education--A course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(18) Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term does not include a step-parent.

(19) Possessory conservator--A natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(20) Private high school--A private or parochial school in Texas.

(21) Public technical institute or college--The Lamar Institute of Technology or any campus of the Texas State Technical College System.

(22) Regular semester--A fall or spring semester, typically consisting of 16 weeks.

(23) Residence--A person's home or other dwelling place.

(24) Residence Determination Official--The primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(25) Resident tuition--The amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(26) Temporary absence--Absence from the State of Texas with the intention to return, generally for a period of less than five years.

(27) United States Citizenship and Immigration Services (USCIS)--The bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.23. Effective Date of this Subchapter.

Each institution shall apply these rules beginning with enrollments for the Fall Semester, 2006.

§21.24. Determination of Resident Status.

(a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:

(1) a person who:

(A) graduated from a public or accredited private high school in this state or, as an alternative to high school graduation, received the equivalent of a high school diploma in this state, including the successful completion of a nontraditional secondary education; and

(B) maintained a residence continuously in this state for:

(i) the thirty-six months immediately preceding the date of graduation or receipt of the diploma equivalent, as applicable; and

(ii) the 12 months preceding the census date of the academic semester in which the person enrolls in an institution.

(2) a person who:

(A) established a domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained a residence continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(3) a dependent whose parent:

(A) established a domicile in this state not less than 12 months before the census date of the academic semester in which the person enrolls in an institution; and

(B) maintained a residence continuously in the state for the 12 months immediately preceding the census date of the academic semester in which the person enrolls in an institution.

(b) The following non-U.S. citizens may establish a domicile in this state for the purposes of subsection (a)(2) or (3) of this section:

(1) a Permanent Resident;

(2) a person who is eligible for permanent resident status, as defined in §21.22(6) of this title (relating to Definitions);

(3) an eligible nonimmigrant that holds one of the types of visas listed in Chart I and incorporated into this subchapter for all purposes;
Figure: 19 TAC §21.24(b)(3)

(4) a person classified by the USCIS as a Refugee, Asylee, Parolee, Conditional Permanent Resident, or Temporary Resident;

(5) a person holding Temporary Protected Status, and Spouses and Children with approved petitions under the Violence Against Women Act (VAWA), an applicant with an approved USCIS I-360, Special Agricultural Worker, and a person granted deferred action status by USCIS;

(6) a person who has filed an application for Cancellation of Removal and Adjustment of Status under Immigration Nationality Act 240A(b) or a Cancellation of Removal and Adjustment of Status under the Nicaraguan and Central American Relief Act (NACARA), Haitian Refugee Immigrant Fairness Act (HRIFA), or the Cuban Adjustment Act, and who has been issued a fee/filing receipt or Notice of Action by USCIS; and

(7) a person who has filed for adjustment of status to that of a person admitted as a Permanent Resident under 8 United States Code 1255, or under the "registry" program (8 United States Code 1259), or the Special Immigrant Juvenile Program (8 USC 1101(a)(27)(J)) and has been issued a fee/filing receipt or Notice of Action by USCIS.

(c) The domicile of a dependent's parent is presumed to be the domicile of the dependent unless the dependent establishes eligibility for resident tuition under subsection (a)(1) of this section.

(d) A domicile in Texas is presumed if, at least 12 months prior to the census date of the semester in which he or she is to enroll, the person owns real property in Texas, owns a business in Texas, or is married to a person who has established a domicile in Texas. Gainful employment other than work-study and other such student employment can also be a basis for establishing a domicile.

(e) The temporary absence of a person or a dependent's parent from the state for the purpose of service in the U.S. Armed Forces, Public Health Service, Department of Defense, U.S. Department of State, as a result of an employment assignment, or for educational purposes, shall not affect a person's ability to continue to claim that he or she is a domiciliary of this state. The person or the dependent's parent shall provide documentation of the reason for the temporary absence.

(f) The temporary presence of a person or a dependent's parent in Texas for the purpose of service in the U.S. Armed Forces, Public

Health Service, Department of Defense or service with the U.S. Department of State, or as a result of any other type of employment assignment does not preclude the person or parent from establishing a domicile in Texas.

§21.25. Information Required to Initially Establish Resident Status.

(a) To initially establish resident status under §21.24 of this title (relating to Determination of Resident Status):

(1) a person who qualifies for residency under §21.24(a)(1) of this title shall provide the institution with:

(A) a completed set of Core Residency Questions; or

(B) a copy of supporting documentation along with a statement of the dates and length of time the person has resided in this state, as relevant to establish resident status under this subchapter and a statement by the person that the person's presence in this state for that period was for the purpose of establishing and maintaining a domicile in Texas.

(2) a person who qualifies for residency under §21.24(a)(2) or (3) of this title shall provide the institution with a completed set of Core Residency Questions.

(b) An institution may request that a person provide documentation to support the answers to the Core Residency Questions. A list of appropriate documents is included in Revised Chart III, which is incorporated into this subchapter for all purposes. In addition, the institution may request documents that support the information the student may provide in the core questions, Section H.
Figure: 19 TAC §21.25(b)

(c) If a person who establishes resident status under §21.24(a)(1) of this title is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit, stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form provided in Chart II and incorporated into this subchapter for all purposes.
Figure: 19 TAC §21.25(c)

(d) An institution shall not impose any requirements in addition to the requirements established in this section for a person to establish resident status.

§21.26. Continuing Resident Status.

(a) Except as provided under subsection (c) of this section, a person who was enrolled in an institution for any part of the previous state fiscal year and who was classified as a resident of this state under Chapter 54, Subchapter B, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the following fall semester. If an institution acquires documentation that a person is a continuing student who was classified as a resident at the previous institution, no additional documentation is required. The person is not required to complete a new set of Core Questions.

(b) Except as provided by subsection (c) of this section, a person who has established resident status under this subchapter is entitled to pay resident tuition in each subsequent academic semester in which the person enrolls at any institution.

(c) A person who enrolls in an institution after two or more consecutive regular semesters during which the person is not enrolled in a public institution shall submit the information required in §21.25 of this title (relating to Information Required to Establish Resident Status), and satisfy all the applicable requirements to establish resident.

§21.27. Reclassification Based on Additional or Changed Information.

(a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reclassification by providing the institution with supporting documentation as described in Revised Chart III, which is incorporated into §21.25(b) of this title (relating to Information Required to Initially Establish Resident Status).

(b) A person shall provide the institution with any additional or changed information which may affect his or her resident or nonresident tuition classification under this subchapter.

(c) An institution may reclassify a person who had previously been classified as a resident or nonresident under this subchapter based on additional or changed information provided by the person.

(d) Any change made under this section shall apply to the first succeeding semester in which the person is enrolled, if the change is made on or after the census date of that semester. If the change is made prior to the census date, it will apply to the current semester.

§21.28. Errors in Classification.

(a) If an institution erroneously permits a person to pay resident tuition and the person is not entitled or permitted to pay resident tuition under this subchapter, the institution shall charge nonresident tuition to the person beginning with the semester following the date that the institution discovers the error.

(b) Not later than the first day of the following semester, the institution may notify the person that he or she must pay the difference between resident and nonresident tuition for each previous semester in which the student should not have paid resident tuition, if:

(1) the person failed to provide to the institution, in a timely manner after the information becomes available or on request by the institution, any information that the person reasonably should know would be relevant to an accurate classification by the institution under this subchapter information; or

(2) the person provided false information to the institution that the person reasonably should know could lead to an erroneous classification by the institution under this subchapter.

(c) If the institution provides notice under subsection (b) of this section, the person shall pay the applicable amount to the institution not later than the 30th day after the date the person is notified of the person's liability for the amount owed. After receiving the notice and until the amount is paid in full, the person is not entitled to receive from the institution a certificate or diploma, if not yet awarded on the date of the notice, or official transcript that is based at least partially on or includes credit for courses taken while the person was erroneously classified as a resident of this state.

(d) If an institution erroneously classified a person as a resident of this state under this subchapter and the person is entitled or permitted to pay resident tuition under this subchapter, that person is not liable for the difference between resident and nonresident tuition under this section.

(e) If an institution erroneously classifies a person as a nonresident and the person is a resident under this subchapter, the institution shall refund the difference in resident and nonresident tuition for each semester in which the student was erroneously classified and paid the nonresident tuition rate.

§21.29. Waiver Programs for Certain Nonresident Persons.

A person who is classified as a nonresident under the provisions of this section shall be permitted to pay resident tuition, if the person qualifies for one of the following waiver programs:

(1) Economic Development and Diversification Program.

(A) A nonresident person (including a Citizen, a Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) whose family has been transferred to Texas by a company under the state's Economic Development and Diversification Program, and a person's spouse and children shall pay resident tuition as soon as they move to Texas, if the person provides the institution with a letter of intent to establish Texas as his/her home. A person who moves to Texas to attend an institution before his/her family is transferred is permitted to pay the resident tuition beginning with the first semester or term after the family moves to the state.

(B) After the family has maintained a residence in Texas for 12 months, the person may request a change in classification in order to pay resident tuition.

(C) A current list of eligible companies is maintained on the Coordinating Board web site at www.collegefortexans.com.

(2) Program for Teachers, Professors, their Spouses and Dependents.

(A) A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) employed as a teacher or professor at least half time on a regular monthly salary basis (not as hourly employee) by an institution shall pay resident tuition at any institution in the state and the spouse and dependent children of the nonresident person shall also pay resident tuition.

(B) This waiver program is applicable only during the person's periods of employment.

(C) If a spouse or dependent child of the teacher or professor attends an institution other than the employing institution, the employing institution shall provide a letter to the spouse or child's institution verifying the employment of the teacher or professor.

(3) Program for Teaching Assistants and Research Assistants, their Spouses and Dependents.

(A) A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) employed by an institution as a teaching or research assistant on at least a half-time basis in a position related to his/her degree program shall pay resident tuition at any institution in this state and the spouse and dependent children of the nonresident person shall also pay resident tuition.

(B) The employing institution shall determine whether or not the person's employment relates to the degree program.

(C) If a spouse or dependent child of the teacher or professor attends an institution other than the employing institution, the employing institution shall provide a letter to the spouse or child's institution verifying the employment of the teaching or research assistant.

(D) This waiver program is applicable only during the person's periods of employment.

(4) Program for Competitive Scholarship Recipients.

(A) A nonresident person (including a Citizen, Permanent Resident of the U.S., a person who is eligible to be a Permanent Resident of the U.S., and an eligible nonimmigrant) who receives a competitive scholarship from the institution is entitled to pay resident tuition.

(B) In order for the person to be eligible for this waiver program, the competitive scholarship must:

(i) total at least $1,000 for the period of time covered by the scholarship, not to exceed 12 months; and

(ii) be awarded by a scholarship committee authorized in writing by the institution's administration to grant scholarships that permit this waiver of nonresident tuition; and

(iii) be awarded according to criteria published in the institution's paper or electronic catalog, available to the public in advance of any application deadline; and

(iv) be awarded under circumstances that cause both the funds and the selection process to be under the control of the institution; and

(v) permit awards to both resident and nonresident persons.

(C) The scholarship award shall specify the semester or semesters for which the scholarship is awarded and a waiver of nonresident tuition under this provision shall not exceed the semester or semesters for which the scholarship is awarded.

(D) If the scholarship is terminated for any reason prior to the end of the semester or semesters for which the scholarship was initially awarded, the person shall pay nonresident tuition for any semester following the termination of the scholarship.

(E) The total number of persons receiving a waiver of nonresident tuition in any given semester under this provision shall not exceed 5 percent of the students enrolled in the same semester in the prior year in that institution.

(F) If the scholarship recipient is concurrently enrolled at more than one institution, the waiver of nonresident tuition is only effective at the institution awarding the scholarship. An exception for this rule exists for a nonresident person who is simultaneously enrolled in two or more institutions of higher education under a program offered jointly by the institutions under a partnership agreement. If one of the partnership institutions awards a competitive scholarship to a person, the person is entitled to a waiver of nonresident tuition at the second institution.

(G) If a nonresident person is awarded a competitive academic scholarship or stipend under this provision and the person is accepted in a clinical biomedical research training program designed to lead to both a doctor of medicine and doctor of philosophy degree, he or she is eligible to pay the resident tuition rate.

(5) Programs for Lowered Tuition for Individuals from Bordering States or Mexico.

(A) Programs that Require Reciprocity. Waivers of nonresident tuition made through each of the following three programs for persons from states neighboring Texas must be based on reciprocity and the institution shall not grant these waivers unless the institution has been provided with a current written agreement with a similar institution in the other state, agreeing to lower tuition for Texas students attending that institution. A participating Texas institution shall file a copy of such agreements with the Board and the agreements shall not be more than 2 years old. The amount of tuition charged shall not be less than the Texas resident tuition rate.

(i) Persons residing in New Mexico, Oklahoma, Arkansas or Louisiana may pay a lowered nonresident tuition when

they attend Texas A&M Texarkana, Lamar State College-Port Arthur, Lamar State College-Orange or any public community or technical college located in a county adjacent to their home state.

(ii) Persons residing in New Mexico and Oklahoma may pay a lowered nonresident tuition when they attend a public technical college located within 100 miles of the border of their home state.

(iii) Persons residing in counties or parishes of New Mexico, Oklahoma, Arkansas or Louisiana adjacent to Texas may pay a lowered nonresident tuition at any institution.

(iv) If a person or a dependent child's family moves to Texas from a bordering state after the person or dependent child has received a waiver of nonresident tuition based on reciprocity as described in this section, the person is eligible for a continued waiver of nonresident tuition for the 12-month period after the relocation to Texas.

(B) Programs That Do Not Require Reciprocity. Persons who reside in another state may pay a lowered nonresident tuition not less than $30 per semester credit hour above the current resident tuition rate when they attend a general academic teaching institution located within 100 miles of the Texas border if:

(i) the governing board of the institution approves the tuition rate as in the best interest of the institution and finds that such a rate will not cause unreasonable harm to any other institution; and

(ii) the Commissioner approves the tuition rate. This obligation to obtain the approval of the Commissioner is continuing and approval to participate in this waiver program must be obtained at least every two years.

(C) Programs for Residents of Mexico. Subject to the following provisions, persons who are currently residents of Mexico and those persons who are temporarily residing outside of Mexico but with definite plans to return to Mexico shall pay resident tuition.

(i) An unlimited number of residents of Mexico who have demonstrated financial need and attend a general academic teaching institution or a component of the Texas State Technical College System, if the institution or component is located in a county adjacent to Mexico, Texas A&M University--Corpus Christi, Texas A&M University--Kingsville, the University of Texas at San Antonio, or Texas Southmost College shall pay resident tuition.

(ii) A limited number of residents of Mexico who have financial need may attend a general academic teaching institution or campus of the Texas State Technical College System located in counties not adjacent to Mexico and pay resident tuition This waiver program is limited to the greater of two students per 1000 enrollment, or 10 students per institution.

(iii) An unlimited number of residents of Mexico who have demonstrated financial need and register in courses that are part of a graduate degree program in public health conducted by an institution in a county immediately adjacent to Mexico shall pay resident tuition.

(6) Program for the beneficiaries of the Texas Tomorrow Fund. A person who is a beneficiary of the Texas Tomorrow Fund shall pay resident tuition and required fees for semester hours paid under the prepaid tuition contract. If the person is not a Texas resident, all tuition and fees not paid under the contract shall be paid at the nonresident rate.

(7) Program for Inmates of the Texas Department of Criminal Justice. All inmates of the Texas Department of Criminal Justice shall pay resident tuition.

(8) Program for Foreign Service Officers. A Foreign Service officer employed by the U.S. Department of State and enrolled in an institution shall pay resident tuition if the person is assigned to an office of the U.S. Department of State that is located in Mexico.

(9) Program for Registered Nurses in Postgraduate Nursing Degree Programs. An institution may permit a registered nurse authorized to practice professional nursing in Texas to pay resident tuition and fees without regard to the length of time that the registered nurse has resided in Texas, if the nurse:

(A) is enrolled in a program designed to lead to a master's degree or other higher degree in nursing; and

(B) intends to teach in a program in Texas designed to prepare students for licensure as registered nurses.

(10) Programs for Military and Their Families. Members of the U.S. Armed Forces, Army National Guard, Air National Guard, Army, Air Force, Navy, Marine Corps or Coast Guard Reserves and Commissioned Officers of the Public Health Service, and their Spouses or Dependent Children.

(A) Assigned to Duty in Texas. Nonresident members of the U.S. Armed Forces, members of Texas units of the Army or Air National Guard, Army, Air Force, Navy, Marine Corps or Coast Guard Reserves and Commissioned Officers of the Public Health Service who are assigned to duty in Texas, and their spouses, or dependent children, shall pay resident tuition. To qualify, the person shall submit during his or her first semester of enrollment in which he or she will be using the waiver program, a statement from an appropriately authorized officer in the service, certifying that he or she (or a parent) will be assigned to duty in Texas on the census date of the term he or she plans to enroll and that he or she, if a member of the National Guard or Reserves, is not in Texas only to attend training with Texas units. Such persons shall pay resident tuition so long as they reside continuously in Texas or remain continuously enrolled in the same degree or certificate program. For purposes of this subsection, a person is not required to enroll in a summer semester to remain continuously enrolled.

(B) After Assignment to Duty in Texas. A spouse and/or dependent child of a nonresident member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who has been reassigned elsewhere after having been assigned to duty in Texas shall pay resident tuition so long as the spouse or child resides continuously in Texas. For purposes of this subsection, a person is not required to enroll in a summer semester to remain continuously enrolled.

(C) Out-of-State Military. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who is stationed outside of Texas shall pay resident tuition if the spouse and/or child moves to this state and files a statement of intent to establish residence in Texas with the institution that he or she attends.

(D) Survivors. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who died while in service, shall pay resident tuition if the spouse and/or child moves to Texas within 60 days of the date of death. To qualify, a person shall submit satisfactory evidence to the institution that establishes the date of death of the member and that the spouse and/or dependent child has established a domicile in Texas.

(E) Spouse and Dependents who Previously Lived in Texas. A spouse and/or dependent child of a member of the U.S. Armed Forces, or of a Commissioned Officer of the Public Health Service who previously resided in Texas for at least six months shall pay resident tuition, if the member or commissioned officer, at least 12 months prior to the census date of the spouse's or dependent child's enrollment in an institution:

(i) filed proper documentation with the military or Public Health Service to change his/her permanent residence to Texas and designated Texas as his/her place of legal residence for income tax purposes; and

(ii) registered to vote in Texas, and

(iii) has satisfied a least one of the following requirements for the 12 months prior to the first day of the relevant semester:

(I) ownership of real estate in Texas with no delinquent property taxes;

(II) registration of an automobile in Texas; or

(III) execution of a currently-valid will deposited with a county clerk in Texas that indicates he/she is a resident of Texas.

(F) Honorably Discharged Veterans. A former member of the U.S. Armed Forces or Commissioned Officer of the Public Health Service and his/her spouse and/or dependent child shall pay resident tuition for any semester beginning prior to the first anniversary of separation from the military or health service, if the former member:

(i) had, at least one year preceding the census date of the term or semester, executed a document with U.S. Armed Forces or Public Health Service that is in effect on the census date of the term or semester and that changed his/her permanent residence to Texas and designated Texas as his/her place of legal residence for income tax purposes; and

(ii) had registered to vote in Texas for at least 12 months prior to the census date of the term or semester; and

(iii) provides documentation that the member has, not less than 12 months prior to the census date of the term in which he or she plans to enroll, taken 1 of the 3 following actions:

(I) purchased real estate in Texas with no delinquent property taxes;

(II) registered an automobile in Texas; or

(III) executed a currently-valid will that has been deposited with a county clerk in Texas that indicates he/she is a resident of Texas.

(G) NATO Forces. Non-immigrant aliens stationed in Texas under the agreement between the parties to the North Atlantic Treaty regarding status of forces, their spouses and dependent children, shall pay resident tuition.

(H) Radiological Science Students at Midwestern State University. Members of the U.S. Armed Forces stationed outside the State of Texas who are enrolled in a bachelor of science or master of science degree program in radiological sciences at Midwestern State University by instructional telecommunication shall pay resident tuition and other fees or charges provided for Texas residents, if they began the program of study while stationed at a military base in Texas.

(11) Program for the Center for Technology Development and Transfer. Under agreements authorized by Texas Education Code, §65.45, a person employed by the entity with whom the University of Texas System enters into such an agreement, or the person's spouse or child, may pay resident tuition when enrolled in a University of Texas System institution.

§21.30. Residence Determination Official.

(a) Each institution shall designate an individual that is employed by the institution as a Residence Determination Official.

(b) The Residence Determination Official shall:

(1) be knowledgeable of the requirements set out in these rules and the applicable statutes; and

(2) attend at least one training or workshop provided by the Coordinating Board regarding these rules and the applicable statutes in each state fiscal year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §§21.54, 21.55, 21.61, 21.62, 21.64

The Texas Higher Education Coordinating Board proposes amendments to §§21.54, 21.55, 21.61, 21.62, and 21.64, concerning the Hinson-Hazlewood College Student Loan Program. Specifically, the proposed amendment to §21.54(d) will reflect current procedures for institutional reporting of changes in borrower enrollment status. Rather than providing printed rosters of students to institutions for reporting of enrollment changes, the Board subscribes to a national data clearinghouse. Changes in enrollment data reported by participating institutions are processed electronically. Institutions that do not participate in the clearinghouse report enrollment changes directly to the Board. The proposed amendment to §21.55(a)(6) will correct the statement regarding the borrower's provision of two references. The employment status of a person named as a reference is not relevant to that person's knowledge of the borrower's current address throughout the life of the loan. The proposed amendment to §21.61(d) will remove a requirement relating to negotiation of warrants that is no longer relevant. All loan funds are disbursed to institutions by Electronic Funds Transfer (EFT); loan warrants are no longer produced. The proposed amendment to §21.62(a)(3)(B) will eliminate a provision that was part of the Revenue Bond covenants and is no longer relevant because these bonds have been retired. The proposed amendment to §21.62(f) will remove language that is not applicable within the HELMS software system. The order of payment application is addressed later in this section. The proposed amendment to §21.64(c) will provide a more accurate description of the current process for the Texas Higher Education Coordinating Board's communication of borrower account

status to institutions for the purpose of placing and releasing bars on student records and re-registration.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended rules.

Ms. Lois Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be to improve and increase access to higher education in the state of Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6195, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§52.31 - 52.41, which provides the Coordinating Board with the authority to establish procedures to administer the Hinson-Hazlewood College Student Loan Program and Texas Education Code, §52.31, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 52.

The amendments affect Texas Education Code, §§52.31 - 52.41.

§21.54. Eligibility of Institutions.

(a) - (c) (No change.)

(d) Each eligible institution shall promptly report student borrower changes in enrollment status to the Board directly or to the National Student Clearinghouse. [~~The Board shall provide a roster of its borrowers to each eligible institution prior to the end of each enrollment period. Within a reasonable period after the institution receives the roster, the Office of the Registrar shall identify all records of each student, and the institution shall supply information on each student borrower to the Board on a form prescribed by the Commissioner.~~]

§21.55. Eligibility of Students.

(a) Subject to the requirement in subsection (b) of this provision, the Commissioner may authorize, or cause to be authorized, Hinson-Hazlewood College Student Loans to students at any eligible institution which certifies that the student meets program qualifications, if the student:

(1) - (5) (No change.)

(6) has provided information on two references who live at separate addresses[~~, are gainfully employed,~~] and are expected to know the student's current address at all times throughout the life of the loan;

(7) - (10) (No change.)

(b) - (c) (No change.)

§21.61. Disbursements to Students.

(a) - (c) (No change.)

[~~(d) All loan warrants must be negotiated on or before the 120th day after the loan warrant issue date.~~]

§21.62. Repayment of Loans.

(a) Period of loan repayment.

(1) - (2) (No change.)

(3) CAL.

(A) (No change)

[~~(B) Current interest on loans made from the revenue bond fund is due and payable no less frequently than quarterly for the life of the loan.~~]

(B) [~~(C)~~] The repayment period shall begin no earlier than six months after the date on which the student ceases to carry, at an eligible institution, at least one half the normal full-time course load as determined by the institution.

(4) - (5) (No change)

(b) - (e) (No change.)

(f) Late charges. A charge of five percent (5%) of the scheduled monthly payment or five dollars ($5.00), whichever is less, shall be assessed if the past due amount is not received within 20 days of the scheduled due date. These charges shall be collected for late payment of all sums due and payable under the Hinson-Hazlewood Loan Program [~~and shall be collected out of the first payments made in excess of interest charges then due~~].

(g) - (h) (No change.)

§21.64. Enforcement of Collection.

(a) - (b) (No change.)

(c) Bar on Student Records and Re-registration. The Coordinating Board shall make available to each institution a report of Hinson-Hazlewood borrowers who attended the institution and are delinquent in the repayment of one or more loan accounts with the Board. The institution shall place a hold on the students' records and registration for classes. The Board's report shall also identify borrowers who have corrected the delinquent status of their accounts in order that an [~~All records of each student who is a borrower under this Subchapter shall be so identified in the Office of the Registrar at each eligible institution. An~~] official certified copy of such records may be released, and/or the student may re-register in the institution [~~only if the Hinson-Hazlewood College Student Loan Program officer at the institution certifies to the registrar that the borrower's account is in good condition~~]. Exceptions to this section must be approved by the Commissioner in advance of release of an official certified copy of the records or re-registration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER G. TEACH FOR TEXAS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §21.171

The Texas Higher Education Coordinating Board proposes an amendment to §21.171, concerning the Teach for Texas Loan Repayment Assistance Program. Specifically, the proposed amendment to §21.171(a) will correct the reference to the statute authorizing the program. Currently rules cite the statute that authorized another loan repayment program for teachers which has not been funded.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended rule.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amended section will be to improve and increase access to higher education in the state of Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6195, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §56.352, which authorizes the Coordinating Board to adopt rules to administer the program.

The amendment affects the Texas Education Code, §§56.351 - 56.355.

§21.171. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter O, Teach for Texas Loan Repayment Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §56.352 [~~§61.702~~].

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER K. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §21.282, §21.284

The Texas Higher Education Coordinating Board proposes amendments to §21.282 and §21.284, concerning the Good Neighbor Scholarship Program.

Specifically, the proposed amendment to §21.282(6) aligns the definition of "Scholastically qualified" with the language in statute which states the student must meet the institution's basic academic requirements; the reference to "progress towards a degree" has been removed. New §21.284(6) adds language that requires the institution to have a statement on file verifying that the student has registered with the selective service or is exempt from registration under federal law as required in Texas Education Code §51.9095. New §21.284(7) adds the provision allowing an eligible student who is awarded a scholarship to transfer his or her award to another institution if that institution agrees to waive the tuition.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be clarification of program rules. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.207, which provides the Coordinating Board with the authority to formulate and prescribe a plan governing the admission and distribution of all applicants desiring to qualify under the provisions of this section.

The amendments affect Texas Education Code, §54.207.

§21.282. Definitions.
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Scholastically qualified--meets the basic admissions requirements of the nominating institution [~~and maintains satisfactory progress toward a degree~~].

§21.284. Eligible Students.
To be eligible for a Good Neighbor Scholarship a person must:

(1) - (3) (No change.)

(4) not be a member of the Communist Party; [~~and~~]

(5) be recommended for a scholarship by an eligible institution;[~~.~~]

(6) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law; and

(7) be enrolled in an eligible institution willing to waive the person's tuition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER T. MATCHING FUND EMPLOYMENT PROGRAM FOR PROFESSIONAL NURSING STUDENTS

19 TAC §§21.620 - 21.636

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§21.620 - 21.636, concerning the Matching Fund Employment Program for Professional Nursing Students. Specifically, the repeal will delete current Chapter 21, Subchapter T, concerning the Matching Fund Employment Program for Professional Nursing Students, from the Board rules and all sections within it. The Coordinating Board's Advisory Committee for Professional Nursing Financial Aid Programs has determined that funds should be directed to scholarship and loan repayment programs and not to matching fund programs.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that there will not be any fiscal implications to state or local government as a result of the repeal of the sections.

Ms. Hollis has also determined that for each year of the first five years that the repeal is in effect, the public benefit will be that confusion from having rules for programs that are not operational will be eliminated. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for professional nursing students.

The repeal affects the Texas Education Code, Chapter 61, Subchapter L, §§61.651, 61.653, and 61.655 - 61.658.

§21.620. Authority and Purpose.

§21.621. Definitions.

§21.622. Advisory Committee.

§21.623. Eligible Institution.

§21.624. Eligible Student.

§21.625. Eligible Nurse.

§21.626. Eligible Employer.

§21.627. Dissemination of Information.

§21.628. Sources of Funding.

§21.629. Allocation of State Funds among Eligible Institutions.

§21.630. Matching Fund Employment Program Awards.

§21.631. The Application Process.

§21.632. Disbursements to Students.

§21.633. The Employment Program Contract.

§21.634. Grievance Procedures.

§21.635. Noncompliance.

§21.636. Program Review Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER U. MATCHING FUND EMPLOYMENT PROGRAM FOR VOCATIONAL NURSING STUDENTS

19 TAC §§21.650 - 21.666

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§21.650 - 21.666, concerning the Matching Fund Employment Program for Vocational Nursing Students.

Specifically, the repeal will delete current Subchapter U, Chapter 21 of Board rules, concerning the Matching Fund Employment Program for Vocational Nursing Students, and all sections within it. The Coordinating Board's Advisory Committee for Vocational Nursing Financial Aid Programs has determined that funds should be directed to scholarship and loan repayment programs and not to matching fund programs.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that there will be no fiscal implications to state or local government as a result of the repeals.

Ms. Hollis has also determined that for each year of the first five years that the repeals are in effect, the public benefit will be that confusion from having rules for programs that are not operational will be eliminated. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeals are proposed under the Texas Education Code, §61.653, which authorizes the Coordinating Board to establish and administer a matching fund program for vocational nursing students.

The repeals affect the Texas Education Code, Chapter 61, Subchapter L, §§61.651, 61.653, and 61.655 - 61.658.

§21.650. Authority and Purpose.

§21.651. Definitions.

§21.652. Advisory Committee.

§21.653. Eligible Institution.

§21.654. Eligible Student.

§21.655. Eligible Nurse.

§21.656. Eligible Employer.

§21.657. Dissemination of Information.

§21.658. Sources of Funding.

§21.659. Allocation of State Funds Among Eligible Institutions.

§21.660. Matching Fund Employment Program Awards.

§21.661. The Application Process.

§21.662. Disbursements to Students.

§21.663. The Employment Program Contract.

§21.664. Grievance Procedures.

§21.665. Noncompliance.

§21.666. Program Review Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.727 - 21.736

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§21.727 - 21.736, concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons. Specifically, this repeal will delete current Chapter 21, Subchapter X, concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons, and all sections within it. The rules for determining residency and all sections within it will be re-adopted as Chapter 21, Subchapter B, §§21.21 - 21.30, the subchapter in which residency rules were housed prior to fall 2006.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined there will be no fiscal implications to state or local government as a result of the repeal of the sections.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the repeal will be consistent cross-references to residency in old and new Coordinating Board documents. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6165, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The repeal affects Texas Education Code, §§54.0501 - 54.075.

§21.727. Authority and Purpose.

§21.728. Definitions.

§21.729. Effective Date of this Subchapter.

§21.730. Determination of Resident Status.

§21.731. Information Required to Initially Establish Resident Status.

§21.732. Continuing Resident Status.

§21.733. Reclassification Based on Additional or Changed Information.

§21.734. Errors in Classification.

§21.735. Waiver Programs for Certain Nonresident Persons.

§21.736. Residence Determination Official.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
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SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

19 TAC §§21.951, 21.953, 21.954

The Texas Higher Education Coordinating Board proposes amendments to §§21.951, 21.953, and 21.954, concerning the Early High School Graduation Scholarship Program.

Specifically, the amendment to §21.951(6) updates the citation and title for Chapter 21, Subchapter B, which deals with residency. The amendment to the introductory paragraph of §21.953(a) indicates the provisions of that paragraph only apply to students graduating between September 1, 2005, and August 31, 2007. This amendment was proposed in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3439) and the Board approved the amendment at its July 2007 Board meeting. However, the amendment was inadvertently not filed with the *Texas Register* on final adoption. Amendments to §21.953(a)(2) and (3), (b)(4) and (5), and (c)(4) and (5), reflect state selective service registration requirements (Texas Education Code §51.9095) for receiving state aid. The amendment to §21.954(d) clarifies the starting deadline for submitting applications. Amendments to §21.954(g) clarify that, in order to receive an award, applicants for the exemption who graduated prior to June 15, 2007, must be residents of Texas and that applicants who graduate on or after that date must be U.S. citizens or otherwise lawfully be in the United States.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §56.209, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.201 - 56.210.

The amendments affect Texas Education Code, §§56.201 - 56.210.

§21.951. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B [~~X~~] of this title (relating to Determination of [~~Determining~~] Residence Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§21.953. Eligible Students.

(a) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school before September 1, 2005 but prior to September 1, 2007 must:

(1) (No change.)

(2) have completed the requirements for a high school diploma in not more than thirty-six consecutive months having completed all years of high school in Texas; and [~~.~~]

(3) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(b) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school on or after September 1, 2005 but prior to June 15, 2007, must:

(1) - (3) (No change.)

(4) have graduated:

(A) (No change.)

(B) in not more than 45 consecutive months, if the student graduated with at least 30 hours of college credit; and[~~.~~]

(5) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(c) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school on or after June 15, 2007, must:

(1) - (3) (No change.)

(4) have graduated from a public high school in Texas:

(A) (No change.)

(B) in not more than 46 consecutive months, if the student graduated with at least 30 hours of college credit; and[~~.~~]

(5) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(d) - (e) (No change.)

§21.954. The Application and Awarding Process.

(a) - (c) (No change.)

(d) High school counselors are to send the completed and signed applications certified by the principal to the Board for processing. Applications should not be sent to the Board more than 30 days prior to a student's high school graduation date.

(e) - (f) (No change.)

(g) If the student graduated from high school prior to June 15, 2007, institutions [~~Institutions~~] must confirm that the student is a resident of Texas before they can grant a scholarship through the program outlined in this subchapter. If the student graduated from high school on or after June 15, 2007, institutions must confirm that the student is a citizen of the United States or otherwise lawfully authorized to be present in the United States before they can grant a scholarship through the program outlined in this subchapter.

(h) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2008.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1081, 21.1083, 21.1084, 21.1088

The Texas Higher Education Coordinating Board proposes amendments to §§21.1081, 21.1083, 21.1084, and 21.1088, concerning the Educational Aide Exemption Program.

Specifically, the amendment to §21.1081(8) updates the citation and title for Board rules dealing with residency. Amendments to §21.1083(7) and (8) reflect state selective service registration requirements (Texas Education Code §51.9095) for receiving state aid. Amendments to §21.1084 include the addition of subsection (d), which requires students whose financial need is based on adjusted gross income to follow up with prior year income verification if their initial eligibility was based on prior prior-year data. If the verified income does not confirm the student's eligibility, the student will be required to repay the award to the program. Section 21.1084(d) is relettered as §21.1084(e) accordingly. The amendment to §21.1088 adds §21.1088(c) and clarifies that students who receive an exemption through this title while completing their bachelor's degree may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate (as indicated in Texas Education Code §21.050(c)).

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.214, which provides the Coordinating Board with the authority to adopt rules to implement these sections.

The amendments affect Texas Education Code, §54.214.

§21.1081. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (7) (No change.)

(8) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B [~~§§21.727 - 21.736~~] of this title (relating to Determination of Residence Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§21.1083. Eligible Students.

To receive an award through the Educational Aide Exemption Program, a student must:

(1) - (5) (No change.)

(6) meet the academic progress standards of the institution; [~~and~~]

(7) follow application procedures and schedules as indicated by the Board; and [~~.~~]

(8) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

§21.1084. The Application and Awarding Process.

(a) - (c) (No change.)

(d) If the student's financial need is based on the income methodology and prior year adjusted gross income is not available at the time of application, eligibility can be temporarily based on a prior prior-year tax return, but the student must provide the Board a copy of the prior-year tax return by the deadline set by the Board and reported to the student in his or her award letter. If the updated return indicates an income that exceeds the cut-off amount for eligibility, the student will be required to refund to the program any awards received based on prior prior-year data.

(e) [~~(d)~~] As soon as possible after processing applications, the Board will notify the relevant institutions, students and school districts of their awards. Institutions will be able to verify approval or a student's award through the Board's web site.

§21.1088. Exemption from Student Teaching.

(a) - (b) (No change.)

(c) A person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under this subchapter may not be required to participate in any field experience

or internship consisting of student teaching to receive a teaching certificate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER JJ. THE KENNETH H. ASHWORTH FELLOWSHIP PROGRAM

19 TAC §21.2003, §21.2005

The Texas Higher Education Coordinating Board proposes amendments to §21.2003 and §21.2005, concerning the Kenneth H. Ashworth Fellowship Program.

Specifically, the proposed amendments to §21.2003(b) eliminate the Student Services Division's representation on the selection committee in order to separate the staff performing support activities from those involved in the selection process. The proposed amendment to §21.2005 deletes a specific award amount from the rules to allow for flexibility in setting this amount based on the availability of funds.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be more flexibility in program operations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.068, which allows the Board to accept gifts and donations from individuals and groups in order to offer programs that encourage students to attend college.

The amendments affect Texas Education Code, §61.068.

§21.2003. Selection Committee.

(a) (No change.)

(b) The committee consists of three members of the Coordinating Board staff appointed by the Commissioner, including at least one representative from the universities division[~~, one from the Student Services division~~] and one from another division of the agency.

§21.2005. Award Amounts.

No annual award received through this program may exceed an amount set by the selection committee [~~$2,000~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
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SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §§21.2100, 21.2102, 21.2103

The Texas Higher Education Coordinating Board proposes amendments to §§21.2100, 21.2102 and 21.2103, concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act). These amendments were adopted on an emergency basis and appeared in the February 1, 2008, issue of the *Texas Register* (33 TexReg 817).

Specifically, amendments to §§21.2100(5), 21.2102(1) and 21.2103(1)(A) all reflect the withdrawal of General Opinions GA-0347 and GA-0445 by the Attorney General of Texas. The proposed amendments redefine the term "citizen of Texas" as "resident of Texas," and strike from the eligibility requirements for Hazlewood benefits the requirement that, in order for a veteran or his or her dependents to be eligible for Hazlewood benefits, such veteran must have been a citizen of the United States at the time he or she entered the armed services.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has estimated that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be that veterans who were residents of Texas but who were not citizens of the United States at the time they entered the service, and their children, will be eligible for the benefits offered through the Hazlewood Act. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.203, which provides the Coordinating Board with

the authority to adopt any rules necessary to administer Texas Education Code, §54.203.

The amendments affect Texas Education Code, §54.203.

§21.2100. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Citizen of Texas--A person who is a [~~United State Citizen and a~~] resident of Texas.

(6) - (19) (No change.)

§21.2102. Eligible Veterans.

In order to be eligible to receive a Hazlewood Act Exemption, a veteran shall demonstrate that he or she:

(1) at the time he or she entered the service, was [~~a citizen of the United States and~~] a resident of Texas;

(2) - (8) (No change.)

§21.2103. Eligible Children.

In order to be eligible to receive a Hazlewood Act Exemption, children shall demonstrate that they:

(1) are dependent children of:

(A) members of the U.S. Armed Forces who were [~~citizens of the United States and~~] residents of Texas when they entered the service and who:

(i) - (iv) (No change.)

(B) (No change.)

(2) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER A. PROVISIONS FOR THE SPECIAL LEVERAGING EDUCATIONAL ASSISTANCE GRANT PROGRAM FOR STUDENTS AT INDEPENDENT INSTITUTIONS

19 TAC §22.1, §22.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §22.1 and §22.2 concerning the Provisions for the Special Leveraging Educational Assistance Grant Program for Students at Independent Institutions. Specifically, this repeal will delete current Subchapter A, Chapter 22 of Board rules, concerning the Provisions for the Special Leveraging Educational Assistance Grant Program for Students at Independent Institutions, and all sections within it. The program is governed by federal regulations and state rules are not needed.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that there will not be any fiscal implications to state or local government as a result of the rules repeal.

Ms. Hollis has also determined that for each year of the first five years that the repeal is in effect, the public benefit will be that confusion from having rules for a program that is governed by federal regulations will be eliminated. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules necessary to implement the Tuition Equalization Grant Program.

The repeal affects the Texas Education Code, Chapter 61, Subchapter F, §§61.221 - 61.230.

§22.1. Adoption of Tuition Equalization Grant Program Rules.

§22.2. Exceptions to Tuition Equalization Grant Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
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SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.22 - 22.30

The Texas Higher Education Coordinating Board proposes amendments to §§22.22 - 22.30 concerning Provisions for the Tuition Equalization Grant Program. Specifically, the proposed amendments to §22.22(5) corrects the definition of "Degree or certification program of four years or less" to agree with the

term "or less". The proposed amendment to §22.22(8) deletes the term "Encumbered funds", as this term is no longer a feature in the program. Section 22.22(9) - (18) are renumbered accordingly. The proposed amendments to new §22.22(13) replaces the term "a person" with the term "a student" since this is the term used later in the rule. The proposed amendment to new §22.22(14) replaces the term "Initial award" with "Initial TEG" since this is the term used later in the rule and specifies the meaning of "Initial" to mean the first TEG award the student ever received. The proposed additions of §22.22(18), "Program Maximum", §22.22(20), "Regular Semester", §22.22(22), "State Fiscal Year", and §22.22(23), "Tuition Differential", are newly defined terms that have been added to assist the schools in administering the program. The proposed amendment to new §22.22(25) adds the term "student" to the definition of "Undergraduate". The proposed amendment to §22.23(a)(1) incorporates the conclusions in Texas Attorney General Opinion GA-0395, which indicated independent or private institutions have to be accredited by an entity that also accredits public institutions in order to meet the statutory requirement in Texas Education Code, §61.222 of meeting "the same standards and accreditation as public institutions". Amendments to §22.23(c)(3)(B)(iii) adds "refunds" to the types of activities for which an institution may be assessed a penalty if the refund is received after the deadline. The proposed amendment to §22.24(1)(A) replaces "an academic year" with the new term "state fiscal year" since this is the term used throughout the rules. In §22.24(3)(A) and (B)(i), the proposed amendment replaces the term "person" with the term "student" for consistency throughout these rules. Amendments in §22.24(3)(C) and (D) have been added to distinguish the difference between undergraduates and graduates regarding the number of hours required for continuing in the TEG program. The amendment in §22.24(5) identifies the three types of degree programs (first associate's, baccalaureate, or graduate) that are acceptable for participation in the TEG program. The proposed amendment in §22.24(7) adds language that requires the institution to have a statement on file verifying that the student has registered with the Selective Service System or is exempt from registration under federal law as required in Texas Education Code, §51.9095. The proposed amendments in §22.25(a), (b), and (c) replace the terms "person", "academic year", "TEG for the first time", and "grant" with the new terms that have already been described. In §22.26, the proposed amendment replaces the title "Hardship Provisions for Persons Awarded TEG for the first time on or after September 1, 2005" with the title "Hardship Provisions for Students Awarded an Initial TEG on or after September 1, 2005" for added consistency throughout the rules. In §22.26(a), the term "person" is replaced with the term "student", and new §22.26(a)(3) adds a third hardship condition to allow undergraduates who need less than 12 hours to complete a degree to qualify for a prorated grant award. In §22.27(b)(1) and (b)(1)(B), the amendment clarifies that the TEG award amount is calculated each fiscal year and may not exceed the prescribed maximums during that year. Section 22.27(b)(2) expands eligibility to receive a grant on a pro-rated basis to students who are enrolled less than half time if they are due to graduate. In §22.27(c), the title "Program Maximum" is replaced with the newly defined term "Exceptional Need Award" and again, the new term "undergraduate student" replaces the term "undergraduate" for consistency. Also in §22.27(c), the proposed amendments delete §22.27(c)(1), which is now redundant since "Program Maximum" is now defined in §22.22(18) and §22.27(c)(2), which is covered under the introductory sentence to §22.27(c) "Exceptional Need Award". Amendments in §22.27(e) clarify that a "Disbursement Limit" applies to either a single term or semester and incorporates the formula for calculating a student's maximum award amount. In §22.28 (Adjustment to Awards Made through Campus Based Processing), the proposed amendment deletes the requirement that unused funds should be returned by "check". All institutions have the option to return funds through electronic funds transfer. Other amendments to §22.28(1) and (2) have been made to clarify that institutions should use any released funds to re-award other students attending their institutions and must return any unused funds by the deadline. Section 22.28(3) was added to specify when refunds are or are not required. The amendments to §22.29 replace the title "Retroactive Disbursements" with the new title "Late Disbursements", and §22.29(b) describes procedures for awarding late disbursements to align TEG with the late disbursement procedures in the other grant programs. Amendments to §22.30(b) delete references to "encumbered funds" and reflect new procedures for reallocation. These new procedures specify that institutions must draw down their TEG funds on or before a specified date, or lose claim to these funds completely. Funds released in this way are subject to reallocation among other institutions.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the section will be more consistent administration among participating institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.229 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§61.221 - 61.230.

The amendments affect §§61.221 - 61.230.

§22.22. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Awarded--Offered [~~offered~~] to a student.

(2) Board--The [~~the~~] Texas Higher Education Coordinating Board.

(3) - (4) (No change.)

(5) Degree or certificate program of four years or less--A [~~a~~] baccalaureate degree or certificate program other than in architecture, engineering or any other program determined by the Board to require [~~more than~~] four years or less to complete.

(6) Degree or certificate program more than four years--A [a] baccalaureate degree or certificate program in architecture, engineering or any other program determined by the Board to require more than four years to complete.

(7) Disbursement date--The [the] date on which the Board generates a voucher requesting a grant disbursement for an institution.

[(8) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.]

(8) [(9)] Exceptional financial need--The [the] need an undergraduate student has if his or her expected family contribution is less than or equal to $1,000.

(9) [(10)] Enrollment on at least a half-time basis--For undergraduates students, enrolled for the equivalent of six or more semester credit hours. For graduate students, enrolled for the equivalent of 4.5 or more semester credit hours.

(10) [(11)] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(11) [(12)] Full-time enrollment--For undergraduates, enrollment for the equivalent of twelve or more semester credit hours. For graduate students, enrollment for the equivalent of nine or more semester credit hours.

(12) [(13)] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(13) [(14)] Graduate student--A student [a person] who has been awarded a baccalaureate degree.

(14) [(15)] Initial TEG [award]--The [the] first Tuition Equalization Grant ever awarded to a specific student [person].

(15) [(16)] Period of enrollment--The term or terms within a state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(16) [(17)] Private or independent institution--Any [any] college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003.

(17) [(18)] Program or TEG--The [the] Tuition Equalization Grant Program.

(18) Program Maximum--The TEG Program award maximum determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant; Amount).

(19) (No change.)

(20) Regular Semester--A fall or spring semester, typically of 16 weeks duration.

(21) [(20)] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B, of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(22) State Fiscal Year--A period of time that begins on September 1 of one calendar year and ends on August 31 of the following calendar year.

(23) Tuition Differential--The difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.

(24) [(21)] Tuition Equalization Grant need (TEG need)--The total amount of TEG funds that full-time students at an approved institution would be eligible to receive if the program were fully funded.

(25) [(22)] Undergraduate student--An [an] individual who has not yet received a baccalaureate degree.

§22.23. Institutions.

(a) Eligibility.

(1) Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003, or that is located in Texas and is accredited by the Southern Association of Colleges and Schools [meets the same program standards and accreditation as public institutions of higher education as determined by the Board], except a theological or religious seminary, is [seminaries are,] eligible to participate in the TEG Program.

(2) - (3) (No change.)

(b) (No change.)

(c) Responsibilities.

(1) - (2) (No change.)

(3) Reporting.

(A) (No change.)

(B) Penalties for Late Reports and/or Late Refunds.

(i) - (ii) (No change.)

(iii) The Commissioner may assess more severe penalties against an institution if any report or refund is received by the Board more than one month after its due date. The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each late refund of grant funds. If grant funds are returned more than a week after the announced return date, they will be considered late.

(iv) (No change.)

(C) (No change.)

(4) (No change.)

§22.24. Eligible Students.

To receive an award through the TEG Program, a student must:

(1) be enrolled for a minimum number of semester credit hours, which requires:

(A) if the student received a TEG in a state fiscal [an academic] year prior to 2005 - 2006 or was awarded a TEG for the 2005 - 2006 state fiscal [academic] year prior to September 1, 2005, enrollment on at least a half-time basis; or

(B) (No change.)

(2) (No change.)

(3) maintain satisfactory academic progress in his or her program of study which requires:

(A) if the student [person] received a TEG in a state fiscal [an academic] year prior to 2005 - 2006 or was awarded a TEG for

the 2005 - 2006 state fiscal [~~academic~~] year prior to September 1, 2005, the student [~~person~~] must meet the academic progress requirements as set by the institution; or

(B) if the student [~~person~~] was awarded his or her initial TEG award on or after September 1, 2005:

(i) completion of at least 24 semester credit hours in the student's [~~person's~~] most recent academic year in an undergraduate degree or certificate program; or completion of at least 18 semester credit hours in the student's [~~person's~~] most recent academic year in a graduate or professional degree program (unless fewer hours are required for the completion of the degree), and

(ii) establishment and maintenance of an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at public or private institutions.

[~~(C)~~] Grade point average calculations shall be made in accordance with institutional policies except that if a grant recipient's grade point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides official transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student's overall grade point average now meets or exceeds program requirements.

(C) An undergraduate student enrolled in a participating institution for only one regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in subparagraph (B)(i) of this paragraph for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that term or semester.

(D) A graduate student enrolled in a participating institution for only one regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in subparagraph (B)(i) of this paragraph for continuing in the program if he or she completes at least 9 semester credit hours or its equivalent during that term or semester.

(4) (No change.)

(5) be enrolled in an approved institution, in an individual degree plan leading to a first associate's degree, baccalaureate degree or a graduate degree;

(6) be required to pay more tuition than is required at a comparable public college or university and be charged no less than the regular tuition required of all students enrolled at the institution; [~~and~~]

(7) have a statement on file with the institution indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law; and

(8) [~~(7)~~] not be a recipient of any form of athletic scholarship during the semester or semesters he or she is receiving a TEG.

§22.25. End of Eligibility.

(a) A student [~~person~~] awarded TEG [~~for a year~~] prior to the 2005 - 2006 state fiscal [~~academic~~] year [~~or on~~] or before September 1, 2005, for the 2005 - 2006 state fiscal [~~academic~~] year may continue to receive grants as long as he or she meets the relevant eligibility requirements of §22.24 of this title (relating to Eligible Students).

(b) An undergraduate student who is awarded an initial [~~a~~] TEG [~~for the first time~~] on or after September 1, 2005, shall not be eligible for a TEG [~~grant~~] on either:

(1) the fifth anniversary of the initial award of a TEG to the student [~~person~~], if the student [~~person~~] is enrolled in a degree or certificate program of four years or less; or

(2) the sixth anniversary of the initial award of a TEG to the student [~~person~~], if the student [~~person~~] is enrolled in a degree or certificate program of more than four years.

(c) A graduate student who is awarded an initial [~~a~~] TEG [~~for the first time~~] on or after September 1, 2005, may continue to receive grants as long as he or she meets the relevant eligibility requirements of §22.24 of this title.

§22.26. Hardship Provisions for Students [~~Persons~~] Awarded an Initial TEG [~~for the First Time~~] on or after September 1, 2005.

(a) In the event of a hardship or for other good cause, the Program Officer at an eligible institution may allow an otherwise eligible student [~~person~~] to receive a TEG while enrolled less than full time or if the student's grade point average or number of hours completed falls below the satisfactory academic progress requirements as referred to in §22.24 of this title (relating to Eligible Students). Such conditions may include, but are not limited to:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance; [~~or~~]

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or[~~.~~]

(3) an undergraduate student's need to complete fewer than 12 hours in a given term in order to complete a degree, in which case the award amount should be determined on a pro rata basis for a full-time award.

(b) (No change.)

§22.27. Award Amounts and Uses.

(a) (No change.)

(b) Award Amount.

(1) Each state fiscal year, no TEG [~~No~~] award shall exceed the least of:

(A) the student's financial need; [~~or~~]

(B) the student's tuition differential [~~the difference between the amount of tuition paid at the participating institution and the amount the student would have paid for tuition had he or she been enrolled at a comparable public institution~~]; or

(C) (No change.)

(2) A grant to a part-time student whose initial TEG was awarded prior to September 1, 2005 or to any student enrolled for a limited number of hours due to imminent graduation shall be made on a pro rata basis of a full-time award.

(c) Exceptional Need Award. An undergraduate student who has exceptional financial need may receive a grant in an amount not to exceed 150 percent of the program maximum.

[~~(c) Program maximum.~~]

[~~(1) The TEG Program award maximum is determined by the Board in accordance with Texas Education Code, §61.227 (relating to Payment of Grant Amount).~~]

[(2) An undergraduate awarded a TEG grant on or after September 1, 2005, and who has exceptional financial need may receive a grant in an amount not to exceed 150 percent of the program maximum.]

(d) (No change.)

(e) Term or Semester Disbursement Limit. The amount of any disbursement in a single term or semester may not exceed the student's financial need, tuition differential or the program maximum for the state fiscal year, whichever is the least. [the difference between the tuition paid at the private or independent institution attended and the tuition the student would have paid to attend a comparable public institution.]

(f) (No change.)

§22.28. Adjustments to Awards Made through Campus-Based Processing.

If a student officially withdraws from enrollment, or for some other reason, the amount of a student's disbursement exceeds the amount the student is eligible to receive, [;] the institution shall follow its general institutional refund policy in determining the amount by which the award is to be reduced [to be returned to the program].

(1) Such funds [Funds administered through campus-based operations do not have to be returned directly to the Board, but] should be re-awarded to other eligible students attending the institution. If funds cannot be re-awarded in a timely manner, they should be returned to the Board [in the form of an institution-issued check]. Such payment shall be accompanied with sufficient documentation to enable the Board to identify the appropriate program for which the funds were originally issued.

(2) Funds returned to the Board shall [should] be returned promptly, and must [but in no case shall they] be returned no later [more] than 60 days from the issue date.

(3) If the student withdraws or drops classes after the end of the institution's refund period, no refunds are due to the program.

§22.29. Late Disbursements [Retroactive Disbursements].

(a) (No change.)

(b) Funds that are disbursed after the end of the student's period of enrollment [retroactively] must [either] be used following Board procedures to either pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding student loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.30. Allocation and Reallocation of Funds.

(a) (No change.)

(b) Reallocations. Institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any [unencumbered] funds not yet drawn down from the Board for immediate disbursement to students. The [, and the unencumbered] funds released in this manner are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER C. PROVISIONS FOR THE LEVERAGING EDUCATIONAL ASSISTANCE GRANT FOR STUDENTS AT INDEPENDENT INSTITUTIONS

19 TAC §22.41, §22.42

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §22.41 and §22.42 concerning the Provisions for the Leveraging Educational Assistance Grant Program. Specifically, this proposed repeal will delete current Subchapter C, Chapter 22 of Board rules, concerning the Provisions for the Leveraging Educational Assistance Grant Program, and all sections within it. The program is governed by federal regulations, and state rules are not needed.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that there will not be any fiscal implications to state or local government as a result of the proposed rules repeal.

Ms. Hollis has also determined that, for each year of the first five years that the proposed repeal is in effect, the public benefit will be that confusion from having rules for a program that is governed by federal regulations will be eliminated. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules necessary to implement the Tuition Equalization Grant Program.

The repeal affects the Texas Education Code, Chapter 61, Subchapter F, §§61.221 - 61.230.

§22.41. Adoption of Tuition Equalization Grant Program Rules.

§22.42. Exceptions to Tuition Equalization Grant Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER F. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR VOCATIONAL NURSING STUDENTS

19 TAC §§22.102, 22.105, 22.107, 22.108

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.102, 22.105, 22.107, and 22.108 concerning Provisions for the Scholarship Programs for Vocational Nursing Students. Specifically, the proposed amendments to §22.102(8) corrects the title of Subchapter B referenced in the definition of "Resident of Texas" to the full title "Determining Residence Status and Waiver Programs for Certain Nonresident Persons." The proposed amendments to §22.105(a)(4) and (5) add a requirement that the student must have a statement on file with the institution that verifies that the student has registered with the selective service or is exempt from registration under federal law as required in Texas Education Code, §51.9095. Section 22.105(b) changes responsibility for determining the ranking criteria for selecting scholarship applicants from the Coordinating Board to the institutions. The proposed amendment to §22.107 reflects the conversion of the programs from a central process (awards are determined at the Coordinating Board) to one that is campus-based (awards are made at the institutions) and allocates program funds to institutions according to their percentage of vocational nursing student enrollment statewide. The amendment to §22.108 deletes procedures for submitting applications to the Coordinating Board through a central processing system and adds procedures for requesting and disbursing funds through a campus-based processing system.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that, for each year of the first five years the amended sections as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that, for each year of the first five years the amended sections as proposed are in effect, the public benefit anticipated as a result of administering the section will be more efficient administration by participating institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, 512-427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter L.

The proposed amendments affect §§61.651, 65.652, and 61.655 - 61.659.

§22.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (7) (No change.)

(8) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determining Residence Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(9) - (10) (No change.)

§22.105. Eligible Students.

(a) To receive funds through one of the Vocational Nursing Student Scholarship Programs, a student must:

(1) - (2) (No change.)

(3) show financial need, which acts as one of the upper limits of a student's award through the program; [~~and~~]

(4) maintain satisfactory academic progress in his or her program of study as defined by the institution; and[~~.~~]

(5) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(b) In determining what best promotes the health care and educational needs of this State, the institution [~~Board~~] shall consider the following factors relating to each applicant. The importance to be given each factor will be determined by the Board in consultation with the advisory committee described in §22.112 of this title (relating to Advisory Committee).

(1) - (5) (No change.)

§22.107. Allocations.

Each participating institution will receive a share of the program funds that is based on its share of the statewide relevant vocational nursing student enrollment. Funds allocated to institutions may be used to make awards through either of the programs established by this subchapter. [~~Approved institutions shall be invited to submit scholarship applications for eligible students to the Board by July 15. The number of applications which may be submitted by each school will be determined by the Board in keeping with the size of each school's vocational nursing student enrollment.~~]

§22.108. Disbursements to Institutions.

Program officers will submit fund request forms to the Board periodically to request funds for immediate disbursement to students. Such funds are to be released to students or applied to student accounts within five working days of the funds' arrival at the institution or the institution's fiduciary agent [~~applications for eligible students to the Board, which will (through the State Comptroller's Office) issue state warrants for the students in accordance with disbursement schedules on the applications~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
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19 TAC §§22.109 - 22.113

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§22.109 - 22.113, concerning the Provisions for the Scholarship Programs for Vocational Nursing Students. Specifically, these sections are proposed for repeal because the described procedures are no longer relevant.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the repeal is in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the repeal of the sections.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the repeal will be more efficient administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter L.

The repeal affects §§61.651, 65.652, and 61.655 - 61.659.

§22.109. Adjustments to Awards Made through Central Processing.

§22.110. Retroactive Disbursements.

§22.111. Selection of Recipients.

§22.112. Advisory Committee.

§22.113. Dissemination of Information and Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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19 TAC §§22.109 - 22.111

The Texas Higher Education Coordinating Board proposes new §§22.109 - 22.111, concerning the Provisions for the Scholarship Programs for Vocational Nursing Students. Specifically, the repeal of two sections necessitates the renumbering and creation of the new sections. The new sections will provide procedures for retroactive disbursements, the establishment of an advisory committee, and the dissemination of information and rules.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be a more efficient administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.656 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter L.

The new sections affect Texas Education Code, §§61.651, 65.652, and 61.655 - 61.659.

§22.109. Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(1) owes funds to the institution for the period of enrollment for which the award is being made; or

(2) received a student loan that is still outstanding for the period of enrollment for which the award is being made.

(b) Funds that are disbursed after the end of the student's period of enrollment must either be used to pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.110. Advisory Committee.

(a) The Board shall appoint an advisory committee to advise the Board concerning assistance provided under this subchapter to vocational nursing students.

(1) The advisory committee shall consist of:

(A) a chair named by the Board;

(B) one representative named by the License Vocational Nurses Association of Texas;

(C) one representative named by the Texas Organization of Nurse Executives;

(D) one representative named by the Board of Nurse Examiners of the State of Texas;

(E) two representative of vocational nursing educational programs named by the Texas Association of Vocational Nurse Educators;

(F) one representative named by the Texas Health Care Association; and

(G) one representative named by the Texas Association of Homes for the Aging.

(2) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(b) The duties of the advisory committee shall be to:

(1) advise the Board on appropriate rules for the Vocational Nursing Student Scholarship Programs;

(2) advise the Board on the priorities of emphasis among the scholarship, the matching fund employment program found in Chapter 21, Subchapter U of this title (relating to the Matching Fund Employment Program for Vocational Nursing Students) and loan repayment program found in Chapter 21, Subchapter Q of this title (relating to the Licensed Vocational Nurses' Student Loan Repayment Program), provided for in Texas Education Code, Chapter 61, Subchapter L;

(3) advise the Board on the amount of money needed to fund adequately the Vocational Nursing Student Scholarship Programs;

(4) advise the Board on the establishment of priorities among the criteria for consideration of application approval which are listed in Texas Education Code, Chapter 61, Subchapter L, and in these rules; and

(5) assist the Board in the dissemination of information on the Vocational Nursing Student Scholarship Programs.

§22.111. Dissemination of Information and Rules.

The Board and its advisory committees are responsible for publishing and disseminating general information and program rules for the programs described in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER G. PROVISIONS FOR THE SCHOLARSHIP PROGRAMS FOR PROFESSIONAL NURSING STUDENTS

19 TAC §§22.122, 22.123, 22.125, 22.127, 22.128

The Texas Higher Education Coordinating Board proposes amendments to §§22.122, 22.123, 22.125, 22.127 and 22.128 concerning Provisions for the Scholarship Programs for Professional Nursing Students. Specifically, the proposed amendments to §22.122(9) correct the title of Subchapter B referenced in the definition of "Resident of Texas" to the full title "Determination of Resident Status and Waiver Programs for Certain Nonresident Persons." The proposed amendment to §22.123(a)(2) clarifies that "participating" institutions may not discriminate against individuals wishing to participate in the program on the basis of race, color, origin, gender, religion, age or disability. The proposed amendments to §22.125(a)(5) and (6) add a requirement that the student must have a statement on file with the institution that verifies that the student has registered with the selective service or is exempt from registration under federal law as required in Texas Education Code, §51.9095. §22.125(b) changes responsibility for determining the ranking criteria for selecting scholarship applicants from the Board to the institutions. The proposed amendment to §22.127 reflects the conversion of the program from a central process (awards are determined at the Board) to one that is campus-based (awards are made at the institutions) and allocates program funds to institutions according to their percentage of professional nursing student enrollment statewide. The amendment to §22.128 deletes procedures for submitting applications to the Board through a central processing system and adds procedures for requesting and disbursing funds through a campus-based processing system.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section will be more efficient administration by participating institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter L.

The amendments affect §61.651, 65.652, and 61.655 - 61.658.

§22.122. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (8) (No change.)

(9) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(10) (No change.)

§22.123. Institutions.

(a) Eligibility.

(1) Any college or university defined as a public or private or independent institution of higher education by Texas Education Code, §61.003, or that is located in Texas and meets the same program standards and accreditation as public institutions of higher education as determined by the Board is eligible to participate in the Professional Nursing Scholarship Programs.

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) Each participating school or program must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) - (c) (No change.)

§22.125. Eligible Students.

(a) To receive funds through one of the Professional Nursing Student Scholarship Programs, a student must:

(1) - (3) (No change)

(4) maintain satisfactory academic progress in his or her program of study as defined by the institution; [~~and~~]

(5) be enrolled in a professional nursing program and, (if applying for an award through the Scholarship Program for Licensed Vocational Nurses studying to become Professional Nurses), be a Licensed Vocational Nurse; and[~~.~~]

(6) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(b) In determining what best promotes the health care and educational needs of this State, the institution [~~Board~~] shall consider the following factors relating to each applicant. The importance to be given each factor will be determined by the Board in consultation with the advisory committee described in §22.132 of this title (relating to Advisory Committee).

(1) - (7) (No change.)

§22.127. Allocations.

Each participating institution will receive a share of the program funds that based on its share of the statewide relevant professional nursing student enrollment. Funds allocated to institutions may be used to make awards through any of the programs established by this subchapter. [~~Approved institutions shall be invited to submit scholarship applications for eligible students to the Board by July 15. The number of applications which may be submitted by each school will be determined by the Board in keeping with the size of each school's professional nursing student enrollment. The Board shall notify each school how many applications may be submitted by April 30 of each year.~~]

§22.128. Disbursements to Institutions.

Program officers will submit fund request forms to the Board periodically to request funds for immediate disbursement to students. Such funds are to be released to students or applied to student accounts within five working days of the funds' arrival at the institution or the institution's fiduciary agent [~~applications for eligible students to the Board, which will (through the State Comptroller's Office) issue state warrants for the students in accordance with disbursement schedules on the applications~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
Texas Higher Education Coordinating Board
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19 TAC §§22.129 - 22.133

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§22.129 - 22.133 concerning the Provisions for the Scholarship Programs for Professional Nursing Students. Specifically, these sections are proposed for deletion because the described procedures are no longer relevant.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the sections will be more efficient administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us . Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §61.656, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter L.

The repeal affects §§61.651, 65.652, and 61.655 - 61.658.

§22.129. Adjustments to Awards Made through Central Processing.

§22.130. Retroactive Disbursements.

§22.131. Selection of Recipients.

§22.132. Advisory Committee.

§22.133. Dissemination of Information and Rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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General Counsel
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19 TAC §§22.129 - 22.131

The Texas Higher Education Coordinating Board proposes new §§22.129 - 22.131 concerning the Provisions for the Scholarship Programs for Professional Nursing Students. Specifically, the deletion of two sections necessitates the renumbering and creation of the new sections. The new sections will provide procedures for retroactive disbursements, the establishment of an advisory committee, and the dissemination of information and rules.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the new sections are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of administering the sections will be a more efficient administration of the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.656 which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 61, Subchapter L.

The new sections affect Texas Education Code, §§61.651, 65.652, and 61.655 - 61.658.

§22.129. Retroactive Disbursements.

(a) A student may receive a disbursement after the end of his/her period of enrollment if the student:

(1) owes funds to the institution for the period of enrollment for which the award is being made; or

(2) received a student loan that is still outstanding for the period of enrollment for which the award is being made.

(b) Funds that are disbursed after the end of the student's period of enrollment must either be used to pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.130. Advisory Committee.

(a) The Board shall appoint an advisory committee to advise the Board concerning assistance provided under this subchapter to professional nursing students.

(1) The advisory committee shall consist of:

(A) a chair named by the Board;

(B) one representative named by the Texas Nurses Association;

(C) one representative named by the Texas Organization of Nurse Executives;

(D) one representative named by the Board of Nurse Examiners;

(E) a head of each of the three types of professional nursing educational programs, named by the deans and directors of nursing programs in this state;

(F) a representative of graduate nursing education named by the deans and directors of nursing programs in this state;

(G) one representative named by the Texas Health Care Association; and

(H) one representative named by the Texas Association of Homes for the Aging.

(2) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(b) The duties of the advisory committee shall be to:

(1) advise the Board on appropriate rules for the Professional Nursing Student Scholarship Programs;

(2) advise the Board on the priorities of emphasis among the scholarship, the matching fund employment program found in Chapter 21, Subchapter T of this title (relating to the Matching Fund Employment Program for Professional Nursing Students) and loan repayment program found in Chapter 21, Subchapter P of this title (relating to the Professional Nurses' Student Loan Repayment Program), provided for in Texas Education Code, Chapter 61, Subchapter L;

(3) advise the Board on the amount of money needed to fund adequately the Professional Nursing Student Scholarship Programs;

(4) advise the Board on the establishment of priorities among the criteria for consideration of application approval which are named in Texas Education Code, Chapter 61, Subchapter L, and in these rules; and

(5) assist the Board in the dissemination of information on the Professional Nursing Student Scholarship Programs.

§22.131. Dissemination of Information and Rules.

The Board and its advisory committees are responsible for publishing and disseminating general information and program rules for the programs described in this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800867
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER J. PROVISIONS FOR THE TEXAS TUITION ASSISTANCE GRANT PROGRAM

19 TAC §§22.181 - 22.186

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§22.181 - 22.186, concerning the Provisions for the Texas Tuition Assistance Grant Program. Specifically, the repeal will delete current Chapter 22, Subchapter J, concerning the Texas Tuition Assistance Grant Program, of the Board rules and all sections within it. Beginning in Fiscal Year 2002, funding was limited to renewal students only and remaining funds transferred to the Texas Grant program. The program has since been phased out.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that there will not be any fiscal implications to state or local government as a result of the repeal of the sections.

Ms. Hollis has also determined that for each year of the first five years that the repeal is in effect, the public benefit will be that confusion from having rules for programs that are not operational will be eliminated. There is no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed pursuant to House Bill 713, 76th Texas Legislature. In 1999 House Bill 713 repealed Subchapter G, §§56.101 - 56.108 of the Texas Education Code, Texas Tuition Assistance Grant Program, but required the Coordinating Board to continue funding renewal students. There are no longer any students in the program.

No other statutes, codes, or articles are affected by this proposal.

§22.181. Purpose.

§22.182. Eligible Institutions.

§22.183. Eligible Students.

§22.184. Award Amounts.

§22.185. Funding.

§22.186. Allocations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.226, 22.228, 22.229, 22.231, 22.235, 22.236

The Texas Higher Education Coordinating Board proposes amendments to §§22.226, 22.228, 22.229, 22.231, 22.235, and 22.236, concerning the Toward EXcellence, Access and Success (TEXAS) Grant Program. Specifically, the amendment to §22.226(a)(7) eliminates the definition of "encumbered funds," a term no longer relevant to the administration of the program. The remaining definitions are renumbered accordingly. The amendments to §22.228 include a change to §22.228(a)(1) to eliminate the specific reference to the core residency questions, since students may prove residency through the use of other documents, such as the common application for admission. The addition of §22.228(a)(8) reflects state selective service registration requirements (Texas Education Code §51.9095) for receiving state aid. The addition of §22.228(a)(9) reflects a more specific financial need requirement for initial awards that is used when funding for the TEXAS Grant program is limited. The amendment to §22.228(b)(3) cross-references the existence of a hardship provision that can allow continuing students enrolled less than three-quarters time to receive awards, and §22.228(b)(6) is added to reflect the selective service registration requirement for continuing recipients. Amendments to §22.229(b)(1) and (2) cross-reference the existence of hardship provisions that can allow students to continue to receive awards under certain hardship conditions. Amendments to §22.231 add subsection (e) to clarify that a student enrolled only one semester in a given academic year can meet program academic progress requirements for continuing in the program if he or she completes at least 12 semester credit hours during that term. Amendments to §22.235(b) clarify that "retroactive disbursements" are awards made after the end of a student's period of enrollment. Amendments to §22.236(b) clarify that as of the annual deadline specified by the Board, an institution that has not yet drawn down its full annual allocation of funds for disbursement to students will lose claim to the left over funds, which will be reallocated to other institutions. This deadline (March 1 for Fiscal Year 2008) is used to ensure the full use of funds.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be an easier understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

The amendments affect Texas Education Code, §§56.301 - 56.311.

§22.226. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (6) (No change.)

~~[(7) Encumbered funds--Program funds that have been offered to a specific student, which offer the student has accepted, and which may or may not have been disbursed to the student.]~~

(7) [~~(8)~~] Enrolled on at least a three-quarter basis--Enrolled for the equivalent of nine semester credit hours in a regular semester.

(8) [~~(9)~~] Entering undergraduate--A student enrolled in the first 30 semester credit hours or their equivalent, excluding hours taken during dual enrollment in high school and courses for which the student received credit through examination.

(9) [~~(10)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.

(10) [~~(11)~~] Financial need--The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(11) [~~(12)~~] Initial year award--The grant award made in the student's first year in the TEXAS Grant program, typically made up of a fall and spring disbursement.

(12) [~~(13)~~] Institution of Higher Education or Institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

(13) [~~(14)~~] Period of enrollment--The term or terms within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all the eligibility requirements for an award through this program.

(14) [~~(15)~~] Private or Independent Institution of Higher Education--Any college or university defined as a private or independent institution of higher education by Texas Education Code, §61.003(15).

(15) [~~(16)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(16) [~~(17)~~] Recommended or advanced high school programs--The curriculum specified in the Texas Education Code, §28.025, and the rules promulgated there under by the State Board of Education.

(17) [~~(18)~~] Required fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of an institution) and that an institution charges to a student as a condition of enrollment at the institution or in a specific course.

(18) [~~(19)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B[~~,~~] of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons [~~Determining Residence Status~~]). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(19) [~~(20)~~] Tuition--Statutory tuition, designated and/or Board-authorized tuition.

§22.228. Eligible Students.

(a) To receive an initial award through the TEXAS Grant Program, a student must:

(1) be a resident of Texas[~~, as evidenced by answers to the Board's core residency questions~~];

(2) - (6) (No change.)

(7) enroll in an undergraduate degree or certificate program at an approved institution on at least a three-quarter time basis:

(A) (No change.)

(B) not later than the end of the 12th month after a student has received an associate degree; [~~and~~]

(8) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law;

(9) have an expected family contribution that does not exceed the limit set by the Board for the relevant state fiscal year; and

(10) [~~(8)~~] if awarded the grant on or after September 1, 2005, be enrolled in an institution of higher education.

(b) To receive a continuation award through the TEXAS Grant Program, a student must:

(1) - (2) (No change.)

(3) be enrolled at least three-quarter time unless granted a hardship waiver of this requirement under §21.231 of this title (relating to Hardship Provisions);

(4) (No change.)

(5) not have been granted a baccalaureate degree; [~~and~~]

(6) have a statement on file with his or her institution that indicates the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law;

(7) [~~(6)~~] make satisfactory academic progress towards an undergraduate degree or certificate, as defined in §21.229 of this title (relating to Satisfactory Academic Progress).

(8) [~~(7)~~] If a student's eligibility was based on the expectation that the student would complete the Recommended or Advanced High School Program, and the student failed to do so, then in order to resume eligibility such a student must:

(A) receive an associate's degree;

(B) meet all other qualifications for a TEXAS Grant; and

(C) if required to do so by the institution through which the TEXAS Grant was made, repay the amount of the TEXAS Grant that was previously received.

(c) (No change.)

§22.229. Satisfactory Academic Progress.

(a) (No change.)

(b) At the end of the year in which a person receives a continuation award:

(1) a recipient who was awarded an initial year TEXAS grant prior to September 1, 2005, shall, unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions):

(A) - (B) (No change.)

(2) A recipient who was awarded an initial year award through the TEXAS Grant Program on or after September 1, 2005 shall, unless granted a hardship postponement in accordance with §22.231 of this title (relating to Hardship Provisions):

(A) - (C) (No change.)

(c) (No change.)

§22.231. Hardship Provisions.

(a) - (d) (No change.)

(e) A student enrolled in a participating institution for only one regular term or semester in a given academic year meets the semester-credit-hour requirement outlined in §21.228(b)(7) of this title (relating to Eligible Students) for continuing in the program if he or she completes at least 12 semester credit hours or its equivalent during that term or semester.

§22.235. Retroactive Disbursements.

(a) (No change.)

(b) Funds that are disbursed after the end of a student's period of enrollment [~~retroactively~~] must either be used to pay the student's outstanding balance from his/her period of enrollment at the institution or to make a payment against an outstanding loan received during that period of enrollment. Under no circumstances are funds to be released to the student.

§22.236. Allocation and Reallocation of Funds.

(a) (No change.)

(b) Reallocations. Institutions will have until a date specified by the Board via a policy memo addressed to the Program Officer at the institution to encumber the program funds that have been allocated to them. On that date, institutions lose claim to any [~~unencumbered~~] funds not yet drawn down from the Board for immediate disbursement to students, and the [~~unencumbered~~] funds released in this manner are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 24, 2008
For further information, please call: (512) 427-6114

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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.254, 22.256, 22.260

The Texas Higher Education Coordinating Board proposes amendments to §§22.254, 22.256, and 22.260, concerning the Texas Educational Opportunity Grant Program. Specifically, the proposed amendments to §22.254(15) clarifies the cross-reference of the Board rules for determining residency and corrects the title of Subchapter B referenced in the definition of "Resident of Texas" to the full title: "Determination of Resident Status and Waiver Programs for Certain Nonresident Persons." The proposed amendments to §22.256(a)(6) and new paragraph (7) and §22.256(b)(6) and new paragraph (7) provide for an additional eligibility requirement for initial and continuing students: a statement from the student must be on file with the institution verifying that he or she has registered with the selective service or is exempt from registration under federal law, as required in Texas Education Code, §51.9095. The existing §22.256(b)(7) is re-numbered to paragraph (8). The proposed amendment to §22.260(b)(2) reflects the requirement that an institution may not make awards for amounts less than the maximum amount, except in the case of a student who is enrolled less than half-time, and describes the calculation for determining pro-rated award amounts.

Ms. Lois Hollis, Senior Assistant to the Deputy Commissioner for Business and Finance, has determined that for each year of the first five years the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the amended rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be more consistent administration among participating institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §56.401 - 56.4075.

The amendments affect §§56.401 - 56.4075.

§22.254. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (14) (No change.)

(15) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B [~~§§21.21 - 21.27~~] of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons [~~Determining Residence Status~~]). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§22.256. Eligible Students.

(a) To receive an initial award through the Texas Educational Opportunity Grant Program, a student must:

(1) - (4) (No change.)

(5) not be eligible for a TEXAS Grant; [~~and~~]

(6) not have been granted an associate's or baccalaureate degree; and[~~.~~]

(7) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law.

(b) To receive a continuation award through the Texas Educational Opportunity Grant Program, a student must:

(1) - (5) (No change.)

(6) not be eligible for a TEXAS Grant; [~~and~~]

(7) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from selective service registration under federal law; and

(8) [~~(7)~~] make satisfactory academic progress towards an undergraduate degree or certificate, which requires:

(A) for persons receiving their first awards prior to fall semester, 2005, completion of at least 75% of the hours attempted in the student's most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent.

(B) for persons receiving their first awards for fall 2005 or later:

(i) compliance with the academic progress requirements of the institution as of the end of the first academic year; and

(ii) in subsequent academic years, completion of at least 75% of the hours attempted in the student's most recent academic year, and maintenance of an overall grade point average of at least 2.5 on a four point scale or its equivalent.

(C) The completion rate calculations may be made in keeping with institutional policies.

(D) Grade point average calculations may be made in keeping with institutional policies except that if a grant recipient's grade point average falls below program requirements and the student transfers to another institution, the receiving institution cannot make a continuation award to the transfer student until he/she provides official transcripts of previous coursework to the new institution's financial aid office and that office re-calculates an overall grade point average, including hours and grade points for courses taken at the old and new institutions that proves the student's overall grade point average now meets or exceeds program requirements.

(c) (No change.)

§22.260. Award Amounts and Adjustments.

(a) (No change.)

(b) Award Amounts.

(1) (No change.)

(2) The Board shall determine and announce the maximum amount of a Texas Educational Opportunity Grant award prior to the start of each fiscal year. The calculation of the maximum amount will be based on the mandates contained in Texas Education Code, §56.407. However, no student's award shall be greater than the amount of the student's financial need. To insure the program has sufficient funds to make awards to all eligible returning recipients, institutions may not decrease award amounts per student in order to provide grants to a larger number of applicants. If an otherwise eligible student, due to hardship, enrolls for less than a half-time course load, his or her award is to be prorated. The amount he or she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student is enrolled.

(3) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 13, 2008.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.1

The Texas State Board of Examiners of Psychologists proposes amendments to §461.1, References by Board Members. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.1. References by Board Members.

Current members of the Board [~~board~~] may not provide [~~be used as~~] references for [~~by~~] an applicant for any license granted by [~~applications made to~~] the Board. Current Board [~~board. Applicants may use current board~~] members may [~~to~~] document any training and/or experience an applicant received under the Board [~~a board~~] member's supervision.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200800892
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 305-7706

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22 TAC §461.2

The Texas State Board of Examiners of Psychologists proposes amendments to §461.2, Unofficial Statements and/or Decisions. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.2. Unofficial Statements and/or Decisions.

Unofficial statements made by a Board member, a Board committee [~~Committee~~] member, an advisory committee [~~Advisory Committee~~] member, or staff are not binding on the Board. No member or representative of the Board may make statements or decisions which are binding upon the Board in its deliberations upon ultimate issues presented for Board decision. Issues which ordinarily require Board decision include settlements of contested matters regarding applications, applicant qualifications and licensure, complaint resolution and/or legal matters involving modification, or Board rehearing of any prior decision rendered by the Board in performance of those statutory duties imposed by the provisions of the Psychologists' Licensing Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2008.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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22 TAC §461.5

The Texas State Board of Examiners of Psychologists proposes amendments to §461.5, Contents of License. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.5. Contents of License.

The license will state the licensee's name and the designation of [~~show~~] the highest relevant academic degree held at the time of licensure.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200800894

Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 305-7706

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22 TAC §461.6

The Texas State Board of Examiners of Psychologists proposes amendments to §461.6, File Updates. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.6. File Updates.

An [~~The~~] applicant or licensee [~~any person licensed by the Board~~] is responsible for keeping his or her professional [~~Board~~] file updated. All changes must be reported to the Board in writing within 90 days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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22 TAC §461.7

The Texas State Board of Examiners of Psychologists proposes amendments to §461.7, License Statuses. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.7. License Statuses.

(a) Active Status. Any licensee [~~person~~] with a license on active status may practice psychology pursuant to that license. Any license that is not on inactive, delinquent, retired, resigned, void or revoked status is considered to be on active status. Active status is the only status under which a licensee may engage in the practice of psychology.

(b) Inactive Status.

(1) A licensee may elect inactive status by applying to the Board and paying the fee set in Board Rule §473.5(b) of this title.

(2) [~~(1)~~] Licensees [~~Persons~~] who seek inactive status must return their license to the Board. A licensee [~~person~~] may not [~~engage in the~~] practice [~~of~~] psychology under an inactive license.

(3) [~~(2)~~] A licensee [~~person~~] may place his/her active license on inactive status for a period of two years. Reactivation of this license may occur at any time during this two-year period without the person having to take an exam provided that the person has notified the Board and has paid the required fees. At the end of the two-year period, if the license has not been reactivated, the license automatically becomes void. The inactive status may be extended for additional increments of two years if, prior to the end of each two-year period, the person notifies the Board in writing that an extension is requested and submits proof to the Board of continuous licensure by a psychology licensing board in this or another jurisdiction for the past two-year period and payment of all required fees. A licensee [~~person~~] may indefinitely remain on inactive status if he/she is licensed in this or another jurisdiction and complies with the extension requirements set forth in this paragraph. Any licensee [~~person~~] wishing to reactivate his/her license that has been on inactive status for four years or more must take and pass the Jurisprudence Exam with the minimum acceptable score as set forth in Board rule §463.14 of this title (relating to cutoff scores [~~Cutoff Scores~~]) unless the licensee [~~person~~] holds another license on active status with this Board.

(4) [~~(3)~~] Any licensee [~~person~~] who returns to active status after having been on inactive status must provide proof of compliance with Board rule [~~Rule~~] §461.11 of this title (relating to Continuing Education) before reactivation will occur.

(5) [~~(4)~~] A licensee [~~person~~] with a pending complaint may not place a license on inactive status. If disciplinary action is taken against a licensee's [~~person's~~] inactive license, the licensee [~~person~~] must reactivate the license until the action has been terminated.

(6) [~~(5)~~] Inactive status may be extended for two additional years upon the Board's review and approval of medical documentation

of a catastrophic medical condition of the licensee. The request for this extension must be received in writing before the end of the current inactive status period and requires payment of the $100 inactive status fee.

(c) Delinquent Status. A licensee [~~person~~] who fails to renew his/her license for any reason when required is considered to be on delinquent status. Any license delinquent for more than 12 consecutive months shall be void (non-payment). A licensee [~~person~~] may not engage in the practice of psychology under a delinquent license. The Board may sanction a delinquent licensee for violations of Board rules.

(d) Restricted status. Any license that is currently suspended, on probated suspension, or is currently required to fulfill some requirements in a Board order is considered to be on restricted status. A licensee [~~person~~] practicing under a restricted license must comply with any restrictions placed thereon by the Board.

(e) Retirement Status. A licensee [~~person~~] who is on active or inactive status with the Board may retire by notifying the Board in writing prior to the renewal date for the license. A licensee [~~person~~] seeking to retire after his or her renewal date must submit proof of compliance with the Board's continuing education requirement. A licensee [~~person~~] with a pending complaint, a restricted license, or who is otherwise not in compliance with all applicable Board rules may not retire his or her license. Permission to retire will not be granted for the purpose of allowing a licensee to avoid compliance with Board rule §461.11 of this title (relating to Continuing Education) unless the licensee presents to the Board evidence of extreme medical hardship and the Board grants the request. A licensee [~~person~~] who retires shall be reported to have retired in good standing.

(f) Resignation Status. A licensee [~~person~~] may resign only upon express agreement by the Board. A licensee [~~person~~] who resigns shall be reported as:

(1) Resigned in lieu of adjudication if permitted to resign while a complaint is pending;

(2) Resigned in lieu of further disciplinary action if permitted to resign while the license is subject to restriction; and

(g) Void (Non-Payment) Status. The Board may void any license that has been delinquent for 12 months or more or any inactive license that has expired. An individual may not engage in the practice of psychology under a void license. A license that has been voided may not be reinstated for any reason. A licensee whose license has been voided must submit a new application if he or she wishes to obtain a new license with the Board.

(h) Revoked Status. A license is revoked pursuant to Board Order requiring revocation as a disciplinary action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800896
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 305-7706

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22 TAC §461.13

The Texas State Board of Examiners of Psychologists proposes amendments to §461.13, Errors. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.13. Errors.

If the Board [~~board~~] discovers an error was made in processing an application, in examining an applicant, or in any of its other activities, the Board [~~board~~] has the authority to correct this error.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.6

The Texas State Board of Examiners of Psychologists proposes amendments to rule §463.6, Regionally Accredited Institutions. The amendments are being proposed to make corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.6. Regionally Accredited Institutions.

A regionally accredited educational institution stated in §§501.255(a)(1)(A), [~~§§501.252(a)(1)(A),~~] 501.259, 501.004 and 501.260 of the Act is defined as an educational institution which satisfies the standards of the accrediting association in one of the following six regions throughout the United States:

(1) Southern Association of Colleges and Schools

(2) Western Association of Schools and Colleges

(3) Northwest Association of Schools and Colleges

(4) North Central Association of Colleges and Schools

(5) New England Association of Schools and Colleges

(6) Middle States Association of Colleges and Schools

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §463.8

The Texas State Board of Examiners of Psychologists proposes amendments to §463.8, Licensed Psychological Associate. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.8. Licensed Psychological Associate.

(a) Application Requirements. A completed application for licensure as a psychological associate includes, in addition to the requirements set forth in §463.5 of this title (relating to Application File Requirements), documentation of 450 [~~four hundred and fifty clock~~] hours of practicum internship, or experience in psychology, in not more than two placements, supervised by a licensed psychologist.

(b) Qualifications. A subdoctoral candidate for licensure as a psychological associate shall meet the qualifications and requirements of candidates at the doctoral level as stated in §§501.255(a)(2) - (9) [~~§501.255(a)(2) -(a)(9)~~] of the Act.

(c) Educational Requirements. The Board requires a master's degree which is primarily psychological in nature of at least 42 [~~forty-two~~] semester credit hours for subdoctoral licensure. Of these 42 [~~forty-two~~] hours, at least 27 [~~twenty-seven~~] graduate level semester credit hours (exclusive of practicum) must have been in psychology. Six semester credit hours of thesis credit in a department of psychology may be counted toward these 27 [~~twenty-seven~~] semester credit hours. Four hundred and fifty clock hours of practicum, internship, or experience in psychology, in not more than two placements, supervised by a licensed psychologist, must be completed before the written exam may be taken. No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered for psychological associate licensure. Applicants who have a master's degree in psychology conferred from a psychology program in a regionally accredited educational institution, and who have not satisfied the Board's requirements, will be given an opportunity to satisfy the current requirements of the Board. Requirements include:

(1) enrollment in a regionally accredited college or university in a formal master's or doctoral degree program in psychology;

(2) completion of a maximum of an additional 12 [~~twelve~~] semester hours of course work to satisfy the Board's requirement of 42; [~~forty-two;~~]

(3) submission of a letter from the official in charge of the psychology program offering the additional course work stating that the applicant's graduate degree in psychology, with this additional prescribed course work, is equivalent to a 42 hour [~~forty-two-hour~~] master's degree in psychology from that program; and

(4) submission of a transcript from the educational institution.

(d) Coursework. The application for licensure as a psychological associate shall include course titles and the names of instructors. If questions exist as to the content of course work, the Board may require the applicant to furnish a catalogue of the university or college where the courses were taken and the addresses of instructors.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §463.9

The Texas State Board of Examiners of Psychologists proposes amendments to §463.9, Licensed Specialist in School Psychology. The amendments are being proposed to clarify the requirement that LSSP interns enrolled in formal programs and LSSP trainees approved by the Board may provide psychological services in the public schools before obtaining licensure as LSSPs.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.9. Licensed Specialist in School Psychology.

(a) Application Requirements. A completed application for licensure as a specialist in school psychology includes the following, in addition to the requirements set forth in §463.5 of this title (relating to Application File Requirements):

(1) Documentation of an appropriate graduate degree; and

(2) Documentation from the National School Psychologists' Certification Board sent directly to the Board indicating the applicant holds current valid certification as a National Certified School Psychologist (NCSP); or

(3) Documentation of the following sent directly to the Board:

(A) transcripts that verify that the applicant has met the requirements set forth in subsection (b) of this section;

(B) proof of the internship required by subsection (c) of this section if the applicant did not graduate from either a training program approved by the National Association of School Psychologists (NASP) or a training program in school psychology accredited by the American Psychological Association (APA); and

(C) the score that the applicant received on the School Psychology Examination sent directly from the Education Testing Service; and [.]

(D) three acceptable reference letters from three different individuals who are licensed as psychologists or specialists in school psychology or are credentialed in school psychology in their respective jurisdictions.

(b) Training Qualifications. Candidates for licensure as a specialist in school psychology who hold a currently valid [~~National Certified School Psychologist (~~] NCSP[~~)~~] certification or who have graduated from a training program approved by the NASP [~~National Association of School Psychologists~~] or accredited in School Psychology by the APA [~~American Psychological Association~~] will be considered to have met the training and internship qualifications. All other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, and have completed at least 60 graduate level semester credit hours, also from a regionally accredited academic institution, no more than 12 of which may be internship hours. All 60 hours do not have to be obtained prior to the conferral of the graduate degree and the applicant need not be formally enrolled in a psychology program to obtain graduate hours after the degree date. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework as follows:

(1) Psychological Foundations,[;] including:

(A) biological bases of behavior;

(B) human learning;

(C) social bases of behavior;

(D) multi-cultural bases of behavior;

(E) child or adolescent development;

(F) psychopathology or exceptionalities;

(2) Research and Statistics;

(3) Educational Foundations, [;] including any of the following:

(A) instructional design;

(B) organization and operation of schools;

(C) classroom management; or

(D) educational administration;

(4) Assessment, [;] including:

(A) psychoeducational assessment;

(B) socio-emotional, including behavioral and cultural, assessment;

(5) Interventions, [;] including:

(A) counseling;

(B) behavior management;

(C) consultation;

(6) Professional, Legal and Ethical Issues; and

(7) A Practicum.

(c) Completion of internship. Applicants must have completed a minimum of 1200 hours, of which 600 must be in a public school. A formal internship or other site-based training must be pro-

vided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled or be obtained in accordance with §463.11(c)(1) and (c)(2)(C) of this title (relating to Licensed Psychologist). The internship in the public school must be supervised by an individual qualified in accordance with §465.38 of this title (relating to Psychological Services in the Schools). Internship which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, or is under Board disciplinary order, may be considered for specialist in school psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and must [~~may~~] be obtained in not less than one or more than two academic years. These individuals must be designated as interns. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(d) Additional Requirements. In addition to the requirements of subsection (a) through (c) of this section, applicants for licensure as a specialist in school psychology must meet the requirements imposed under §501.255(a)(2)-(a)(9) of the Psychologists' Licensing Act.

(e) Examinations. Applicants must take the National School Psychology Examination administered by the Educational Testing Service and obtain at least the current cut-off score for the NCSP before applying for the licensed specialist in school psychology. Following Board approval, an applicant for licensure as a specialist in school psychology must take and pass the Board's Jurisprudence Examination.

(f) Trainee Requirements. An applicant for the specialist in school psychology license who meets all requirements, prior to taking and passing the Jurisprudence examination, may, in accordance with §465.38(4) of this title (relating to Psychological Services in the Schools), practice under supervision as a trainee for up to one calendar year.

(g) Provision of psychological services in the public schools by unlicensed individuals. An individual may legally provide psychological services in the public schools as an intern provided that the individual is enrolled in an internship, practicum or other site based training in a school psychology program at a regionally accredited institution of higher education. Once an individual has completed the internship required for licensure as an LSSP and is no longer enrolled in a formal program, the individual may not provide psychological services in the public schools. After the individual has passed the National School Psychology Exam, he or she must apply for licensure as an LSSP with the Board. After the Board has reviewed the LSSP application and approved the training of the applicant, the applicant will be issued an LSSP trainee status letter which allows them to practice in accordance with the LSSP trainee requirements of this rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2008.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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22 TAC §463.10

The Texas State Board of Examiners of Psychologists proposes amendments to §463.10, Provisionally Licensed Psychologist. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.10. Provisionally Licensed Psychologist.

(a) Application Requirements. An application for provisional licensure as a psychologist includes, in addition to the requirements set forth in §463.5 of this title (relating to Application File Requirements), an official transcript which indicates that the applicant has received a doctoral degree in psychology. Additionally, the applicant must meet the requirements of §501.255 of the Psychologists' Licensing Act.

(b) Degree Requirements.

(1) The applicant's transcript must state that the applicant has a doctoral degree that designates a major in psychology. Additionally, the doctoral degree must be from a regionally accredited institution.

(2) The substantial equivalence of a doctoral degree received prior to January 1, 1979, based upon a program of studies whose content is primarily psychological means a doctoral degree based on a program which meets the following criteria:

(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 [~~ninety~~] semester hours, not more than 12 [~~twelve~~] of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs [~~catalogues~~] and brochures its intent to educate and train professional psychologists.

(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or provisionally licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(F) The program must have an identifiable body of students who matriculated in the program.

(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 [~~twelve~~] month period nor more than a 24 [~~twenty-four~~] month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons who have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(I) The following curricular requirements must be met and demonstrated through appropriate course work:

(i) Scientific and professional ethics related to the field of psychology.

(ii) Research design and methodology, statistics.

(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Board evidence of competency in each of the four core areas.

(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(II) Cognitive-affective basis of behavior: Learning, thinking, motivation, emotion.

(III) Social basis of behavior: social psychology, group processes, organizational and system theory.

(IV) Individual differences: personality theory, human development, abnormal psychology.

(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 [~~twenty-four~~] hours in his/her designated specialty area.

(3) Any person intending to apply for provisional licensure under the substantial equivalence clause must file with the Board an affidavit showing:

(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection above verified by official transcripts;

(B) Information regarding each of the instructors in the courses submitted as substantially equivalent;

(C) Appropriate, published information from the university awarding the degree, demonstrating that criteria in paragraphs (2)(A) - (J) of this subsection [~~one through ten above~~] have been met.

(c) An applicant for provisional licensure as a psychologist who is accredited by Certificate of Professional Qualification in Psychology (CPQ) or the National Register or who is a specialist of ABPP will have met the following requirements for provisional licensure: submission of an official transcript which indicates the date the doctoral degree in psychology was awarded or conferred, submission of documentation of the passage of the national psychology examination at the doctoral level at the Texas cut-off score, and submission of three acceptable reference letters. All other requirements for provisional licensure must be met by these applicants. Additionally, these applicants must provide documentation sent directly from the qualifying entity to the Board office declaring that the applicant is a current member in the organization and has had no disciplinary action from any state or provincial health licensing board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
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22 TAC §463.11

The Texas State Board of Examiners of Psychologists proposes amendments to §463.11, Licensed Psychologist. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.11. Licensed Psychologist.

(a) Application Requirements by Provisional Licensure. This application is provided free of charge to the applicant who has taken the oral examination. Upon passage of the oral examination, the applicant may submit the licensed psychologist application. An application for licensure as a psychologist includes, in addition to the requirements set forth in §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation indicating passage of the Board's Oral Examination.

(3) Documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal year must be documented by the Director of Internship Training.

(4) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years, for full-time experience.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Experience may be obtained only in either a full-time or half-time setting.

(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 [~~twelve~~] consecutive calendar months in not more than two placements.

(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.

(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.

(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.

(F) When supervised experience is interrupted, the Board may waive upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months. Any consecutive experience obtained before or after the gap must be at least six months unless the supervisor remains the same. Waivers for such gaps are rarely approved and must be requested in writing and include sufficient documentation to permit verification of the circumstances supporting the request. No waiver will be granted unless the Board finds that the supervised experience for which the waiver is sought was adequate and appropriate. Good cause is defined as:

(i) unanticipated discontinuance of the supervision setting,

(ii) maternity or paternity leave of supervisee,

(iii) relocation of spouse or spousal equivalent,

(iv) serious illness of the supervisee, or serious illness in supervisee's immediate family.

(G) A rotating internship organized within a doctoral program is considered to be one placement.

(H) The experience requirement must be obtained after official enrollment in a doctoral program.

(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board Order or Board Order and assist all supervisees in finding appropriate alternate supervision.

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist may use this title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) The supervisee and supervisor must clearly inform those receiving psychological services as to the supervisory status of the individual and how the patient or client may contact the supervising licensed psychologist directly.

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).

(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this subsection. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which s/he does not have sufficient training and experience, of which a formal internship year is considered to be an integral requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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22 TAC §463.14

The Texas State Board of Examiners of Psychologists proposes amendments to §463.14, Written Examinations. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.14. Written Examinations.

(a) Jurisprudence Examination. All applicants for licensure by the Board are required to pass the Jurisprudence Examination prior to licensure.

(b) Examination in School Psychology. Applicants for licensure as a specialist in school psychology must take the National School Psychology Examination administered by the Educational Testing Service and obtain at least the current cut-off score for the National Certified School Psychologist [~~NCSP~~] before applying for the Licensed Specialist in School Psychology.

(c) Examination for Professional Practice in Psychology. All applicants for licensure as a psychological associate, provisional licensure as a psychologist, or licensure as a psychologist are required to pass the Examination for Professional Practice in Psychology (EPPP) prior to the Board granting licenses.

(d) Applicants Having Taken the Professional Examination. An applicant for licensure who has taken the EPPP in another jurisdiction will not be required to retake the exam provided that:

(1) the applicant's score satisfied the Board's current minimum acceptable score for licensure; and

(2) the applicant can demonstrate that he/she has remained professionally involved in psychology; i.e., at least half-time professional employment and/or academic enrollment in a regionally accredited educational institution.

(e) Doctoral Applicants Taking Exam at Master's Level. An applicant for provisional licensure as a psychologist who has taken the EPPP at the master's level will not be required to retake the exam provided that:

(1) the applicant's score satisfied the Board's current minimum acceptable score for doctoral level applicants; and

(2) the applicant can demonstrate that he or she has remained academically and/or professionally involved in psychology.

(f) Cutoff Scores. The minimum acceptable score for the EPPP is seventy percent (70%) of questions scored for psychologist licensure applicants and fifty-five percent (55%) of questions scored for psychological associate licensure applicants on the pencil and paper version of the test. For computer-delivered EPPP examinations, the cutoff scaled scores are 500 and 350 respectively. Applicants for licensure as a psychological associate must receive a minimum score of eighty percent (80%) of questions scored on the Board's Jurisprudence Examination. All other applications for licensure must receive a minimum score of ninety percent (90%) of questions scored on the Board's Jurisprudence Examination. The exam score of applicants for licensure who have already taken the EPPP must satisfy the requirements of the Board as of the date of application to the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
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22 TAC §463.15

The Texas State Board of Examiners of Psychologists proposes amendments to §463.15, Oral Examination. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.15. Oral Examination.

(a) Application Requirements. An application for the Oral Examination [~~Exam~~] includes an application form, current passport picture of the applicant and required fee.

(b) Eligibility. To be eligible for licensure as a psychologist, all provisionally licensed psychologists shall be required to take and pass the Oral Examination [~~oral exam~~] administered by the Board. Only provisionally licensed psychologists may apply to take the Oral Examination [~~oral exam~~]. The Board shall waive this requirement for Specialists of the American Board of Professional Psychology, Health Service Providers listed in the National Register and for individuals who qualify for licensure under reciprocity.

(c) A candidate for the Oral Examination [~~oral examination~~] must demonstrate sufficient entry-level knowledge of the practice of psychology to pass the exam based on the following standards:

(1) A candidate must have a total score of 64 or above from each of the two examiners to pass the exam.

(2) Scores are based on the demonstrated abilities of the candidate in nine content areas with a possible score in each content score of 9 points for a well articulated verbal answer, 8 points for a good or passing answer, 3 points for a weak, vague or incomplete answer, and minus 10 points for an answer that is substantially incomplete or incorrect.

(3) The nine content areas [~~area~~] are as follows:

(A) Identifies the problems (e.g. initial hypotheses, differential diagnoses, etc.);

(B) Identifies a specific and plausible strategy for gathering further data to refine the problem definition (e.g. psychometrics, observation data collection, etc.);

(C) Develops a realistic intervention or action plan on the basis of the initial formulation;

(D) Recognizes and can formulate an effective response to crises;

(E) Attends to cultural and diversity issues;

(F) Demonstrates awareness of professional limitations;

(G) Can recognize and apply laws which are relevant to the case;

(H) Can recognize and apply professional standards that are relevant; and

(I) Can recognize and apply ethical standards or ethical reasoning pertinent to the case.

(4) Each candidate is presented with a vignette, which is representative of a situation commonly encountered in the area of testing. Candidates are required to articulate a case formulation according to a standard or model that is generally recognized in their area of testing. Candidates are required to respond to questions associated with each vignette.

(5) Areas of psychology in which a candidate may choose to be tested are: clinical, counseling, school, neuropsychological, and industrial and organizational.

(d) Each candidate receives an informational brochure prior to the Oral Examination. [~~In advance additional information is provided to each candidate in the form of a brochure.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
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22 TAC §463.18

The Texas State Board of Examiners of Psychologists proposes amendments to §463.18, Failing Written/Oral Examinations. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.18. Failing Written/Oral Examinations.

Applicants who fail the written examinations or the Oral Examination are permitted to take them again by paying additional exam fees. Split decisions on the Oral Examination are considered to be [~~as~~] failures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §463.21

The Texas State Board of Examiners of Psychologists proposes amendments to §463.21, Board Members as Reviewers of Examinations. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.21. Board Members as Reviewers of Examinations.

All Board members serve as reviewers of written and oral examination materials and procedures unless a [~~except any~~] member [~~who~~] is matriculated [~~him or herself matriculating~~] in a graduate program in psychology or is related within the second degree of affinity or within the second degree of consanguinity to a person who matriculated [~~is matriculating~~] in a graduate program in psychology.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §463.24

The Texas State Board of Examiners of Psychologists proposes amendments to §463.24, Oral Examination Work Group. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.24. Oral Examination Work Group.

(a) The Board establishes a work group of oral examination consultants for the purpose of improving the consistency of the administration and the objectivity of the examination. Qualifications of the consultants are set by Board rule §463.23 of this title (relating to Criteria for Examination Consultants). Members of the work group must be approved by the Board [~~board~~] or its designee.

(b) The work group will include persons interested in or affected by the regulation of the practice of psychology, including faculty members of college or university psychology departments and licensees with varying levels of experience.

(c) The work group shall:

(1) review audiotapes of passed or failed examinations;

(2) review analyses of the performance of persons who failed the examination provided under §501.256(e) of the Act;

(3) assess scoring criteria and clinical scenarios used in the administration of the examination;

(4) recommend improvements to standardize the administration of the examination; and

(5) conduct other appropriate tasks.

(d) The Chair of the Work Group will be appointed by the Board from among the consultants. The Chair will call the meetings of the consultants and direct the work group's activities.

(e) The Chair of the Board's Oral Examination Committee will serve as the Board's liaison to the oral examination work group. This Board member will communicate the mission, goals and tasks to the work group. This Board member will serve as a resource to the work group but will not directly participate in the evaluation of the oral examination. This Board member will be responsible for ensuring that the recommendations of the work group approved by the Board are implemented.

(f) The work group will report at least biennially to the Board [~~board~~] the group's recommendations for improving the consistency of the administration and objectivity of the oral examination. The Board [~~board~~] will modify the oral examination, as necessary, based on the work group's recommendations for the next administration of the oral examination.

(g) The first report of the work group must be submitted to the Board [~~board~~] no later than January 2006. Necessary modifications to the oral examination based on the recommendations of the work group must be made to the exam by the January 2007 examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §463.26

The Texas State Board of Examiners of Psychologists proposes amendments to §463.26, Health Service Provider in Psychology Specialty Certification. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.26. Health Service Provider in Psychology Specialty Certification.

(a) Health Service Provider (HSP) in Psychology is a specialty certification from the Board available to Texas licensed psychologists who are listed in the National Register of Health Service Providers. The National Register defines a health service provider as one who is trained and experienced in the delivery of direct, preventive, assessment, and therapeutic intervention services to individuals whose growth, adjustment, or functioning is impaired, or to individuals who otherwise seek services. This credential does not constitute a license to practice psychology under the Act. The Board will continue to recognize all individuals who were certified as HSP [~~health service providers~~] by the Board prior to January 1, 1998, and who remain in good standing.

(b) Requirements for this credential as of January 1, 1998, are:

(1) Current, active licensure by the Board as a psychologist; and

(2) Documentation submitted directly to the Board from the National Register of HSP [~~Health Service Providers~~] in Psychology that the applicant is currently designated as a Health Service Provider with the National Register.

(c) Active status as a HSP [~~health service provider~~] in psychology requires annual renewal and payment of an annual renewal fee. After one year, if the licensee fails to renew this specialty certification, it is void. To obtain specialty certification again, reapplication is required.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §463.27

The Texas State Board of Examiners of Psychologists proposes amendments to §463.27, Temporary License for Persons Licensed in Other States. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.27. Temporary License for Persons Licensed in Other States.

(a) Temporary licensure is available to applicants for a period of not longer than 30 days from the time the application is approved until the expiration of the 30 days, provided the applicant meets the following conditions [~~conditions are met by the applicant~~].

(1) Submission of a completed application for temporary licensure, including a brief description of the type of psychological service to be provided which is acceptable to the Board and the requested time period for the temporary license;

(2) Submission of the required fee;

(3) Submission of proof that the applicant holds current licensure to practice as a licensed psychologist or a licensed psychological associate in another state where [~~with~~] licensing requirements are substantially equivalent to the Act and Rules of the Board [~~Board's~~];

(4) Submission of documentation directly from the state in which the applicant is currently licensed indicating that the applicant is in good standing; and

(5) The applicant provides documentation that the applicant has passed the Examination for Professional Practice in Psychology [~~EPPP~~] at the Texas cut-off for the type of temporary license sought.

(b) Licensed psychologists and licensed psychological associates with temporary licenses must practice in adherence to the Board rule §465.2(h) of this title (relating to Supervision) [~~Supervision~~], and may consult with the supervising Texas licensed psychologist.

(c) The specific period of time for which the applicant is issued a temporary license is stated in the Board's approval letter which issues the temporary license.

(d) Substantial equivalency of the other state may be documented by the applicant providing a copy of the other board's rules and regulations with pertinent sections highlighted to [~~which~~] indicate training and exam requirements for a particular type of license. This material is then reviewed for substantial equivalency by the Board.

(e) A [~~This type of~~] temporary license is not available to an applicant [~~who has made application~~] for permanent licensure in this state. Upon receipt of an application for a permanent license, the Board nullifies a temporary license [~~is immediately null and void~~] and the individual can no longer practice legally in Texas.

(f) The holder of a temporary license will not be further notified as to the ending date of the temporary license, other than the ending date that is provided in the initial issuance letter. Practicing with an expired temporary license is illegal and may subject [~~qualifies~~] the individual to [~~licensee for~~] disciplinary review by the Board.

(g) Purposes for which a temporary license may be issued include: to serve as an expert witness in court, to assist a patient in transition to a mental health practitioner in Texas, and otherwise [~~others~~] as approved by the Board.

(h) Applicants for temporary licenses who hold current status as Certificate of Professional Qualification in Psychology [~~CPQ~~], National Health Service Provider, or American Board of Professional Psychology [~~ABPP~~] may have documentation from the credentialing entity sent directly to the Board as compliance with and in lieu of subsections (a)(3) and (5) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes amendments to §465.1, Definitions. The amendments are being proposed to recognize the unique position of the psychologist in conducting a forensic evaluation.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.1. Definitions.

The following terms have the following meanings: [~~The following terms have the following meanings:~~]

(1) "Client" has the same meaning as "patient."

(2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a nonprofessional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.

(3) "Forensic psychology" is the provision of psychological services involving a court of law or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. A person who is the subject of forensic evaluation is not considered to be a patient under these rules.

(4) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and

payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(5) "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

(6) "Multiple Relationship" means any relationship between a licensee and another individual involving a professional relationship and more than one non-professional relationship.

(7) "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview.

(8) "Professional relationship" is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization.

(9) "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(10) "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(11) "Recognized member of the clergy," as used in [~~Section~~] §501.004(a)(4) of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, [~~Section~~] §501(c)(3).

(12) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments, treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(13) "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(14) "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2008.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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22 TAC §465.3

The Texas State Board of Examiners of Psychologists proposes amendments to §465.3, Providers of Psychological Services. The amendments are being proposed to clarify the requirements for contracting for psychological services in exempt settings.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.3. Providers of Psychological Services.

(a) Psychologists shall employ or utilize an individual to provide psychological services, in any setting not specifically exempt under §501.004(a)(1) of the Psychologists' Licensing Act (the Act), only if:

(1) The individual is licensed by this Board; or

(2) The individual is specifically exempted from licensure requirements by §501.004(a)(2) of the Act, relating to provision of services as part of a supervised course of study by students, residents or interns pursuing a course of study in a recognized training institution or facility; or,

(3) The individual is engaged in post-doctoral supervision for purposes of satisfying §501.252(b)(2) of the Act; or

(4) The individual is completing supervised experience for purposes of satisfying §501.260(b)(3) of the Act, relating to Licensed Specialist in School Psychology; or

(5) The individual is completing supervised experience for purposes of satisfying the requirements to become a licensed professional listed in §501.004(b) of the Act.

(b) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), [~~§~~]501.252(b)(2), or [~~§~~]501.260(b)(3) of the Act must be under the direct supervision of an authorized supervising licensee at all times. All patients or clients who receive psychological services from an unlicensed individual under such supervision

must be clearly informed of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(c) Licensees who contract to provide psychological services in settings where the Act does not apply pursuant to §501.004 of the Act ("exempt" settings) are not themselves exempt from the Act. In some cases, a licensee may have to follow state or federal guidelines or laws that conflict with Board rules. In those cases, Board rule §461.14 of this title (relating to Conflict between Laws and Board Rules) applies.

(d) Licensees who contract with a third party who contracts to provide psychological services in settings where the Act does not apply pursuant to §501.004 of the Act ("exempt" settings) are not themselves exempt from the Act. In some cases, a licensee may have to follow state or federal guidelines or laws that conflict with Board rules. In those cases, Board rule §461.14 of this title applies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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22 TAC §465.16

The Texas State Board of Examiners of Psychologists proposes amendments to §465.16, Evaluation, Assessment, Testing, and Reports. The amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.16. Evaluation, Assessment, Testing, and Reports.

(a) Scope and Purpose.

(1) Licensees clearly describe the scope and purpose of evaluation, assessment, and testing to patients before they provide these psychological services.

(2) Licensees produce reports that clearly state and accurately reflect the scope and purpose of evaluation, assessment, and testing.

~~[(1) Before performing evaluations, testing and assessments, licensees clearly define the purposes and scope to the subject(s) of the evaluations, testing and/or assessments.]~~

~~[(2) Licensees produce reports consistent with and which clearly state the purpose and scope of the evaluations, testing and/or assessments.]~~

(b) Reliability and Validity.

(1) Licensees verify, by signature and date, that every evaluation, assessment, test result, report, recommendation, or psychological diagnostic or evaluative statement produced is based on information and techniques sufficient to provide appropriate substantiation for its findings.

~~[(1) Licensees produce or co-sign only assessments, recommendations, reports or psychological diagnostic or evaluative statements that are based on information and techniques sufficient to provide appropriate substantiation for the findings.]~~

(2) Licensees administer, score, interpret or use assessment techniques or tests only if they are familiar with the reliability, validation and related standardization or outcome studies of, and proper applications and use of, the techniques they use.

(3) Licensees who administer, score, interpret or utilize psychological assessment techniques, tests or instruments do so in a manner and for purposes for which there are professional or scientific bases.

(4) Licensees do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(5) Licensees do not base decisions or recommendations on tests and measures that are obsolete or not useful for the current purpose.

(c) Limitations.

(1) Licensees include all information that provides the basis for their findings in any report in which they make findings or diagnoses about an individual.

(2) Licensees identify limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals.

(3) Licensees identify various test factors and characteristics of the person being assessed that might affect their professional judgment or reduce the accuracy of their interpretations when interpreting assessment results, including automated interpretations.

(4) Licensees include any significant reservations they have about the accuracy or limitations of their interpretations or findings in any report they produce.

(5) Licensees provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When such an examination is not practical, licensees document the efforts they made to obtain such an examination and clarify the probable impact of their limited information to the reliability and validity of their conclusions.

(d) Test Security and Validity. Licensees conduct testing and maintain and release test protocols and data in a secure manner that does not compromise the validity of the test.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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22 TAC §465.18

The Texas State Board of Examiners of Psychologists proposes amendments to §465.18, Forensic Services. The amendments are being proposed to clarify the rule and add a new provision concerning forensic testimony on child visitation.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.18. Forensic Services.

(a) In General.

(1) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a child custody determination or a divorce, must comply with all applicable Board rules concerning forensic services regardless of whether the licensee is acting as a factual witness or an expert.

(2) Licensees who engage in forensic services must have demonstrated appropriate knowledge of and competence in all underlying areas of psychology about which they provide such services.

(3) All forensic opinions, reports, assessments, and recommendations rendered by a licensee must be based on information and techniques sufficient to provide appropriate substantiation for each finding.

(4) A licensee who provides forensic services must comply with all other applicable Board rules and state and federal law relating to the underlying areas of psychology relating to those services.

(b) Limitation on Services.

(1) A licensee shall refrain from rendering a written or oral professional opinion about any matter for which the licensee lacks appropriate knowledge, competency, and data.

~~[(1) A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.]~~

(2) A licensee who is asked to provide an opinion concerning a specific matter for which the licensee lacks sufficient information to render a professional opinion shall decline to render that opinion unless the required information is provided.

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without conducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

(4) A written or oral opinion about the psychological characteristics of an individual rendered by a licensee who did not conduct an examination of that individual must contain clarification of the extent to which this limits the reliability and validity of the opinion and the conclusions and recommendations of the licensee.

(5) When seeking or receiving court appointment for a forensic assessment, a licensee specifically avoids accepting both appointment for evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case.

(c) Describing the Nature of Services. A license must document in writing that subject(s) of forensic psychological services have been informed of the following: [~~Licensees who interview or examine an individual for purposes of providing forensic services must first inform the individual of the specific purpose of the interview or examination, the party on whose behalf they are performing the services, the use to which the information gathered will be put and who will have access to the results. If there are multiple parties, the psychologist must obtain written informed consent from all adult participants unless informed consent is precluded by court order. All participants must be made aware of the purpose and scope of the evaluation, who has requested the service, and who will be paying fees. Psychologists also inform parties on limits to confidentiality where the engagement involves testimony.~~]

(1) The nature of the anticipated services (procedures);

(2) The specific purpose and scope of the interview, examination, or evaluation;

(3) The identity of the party who requested the psychologist's services;

(4) The identity of the party who will pay the psychologist's fees and the estimated amount of the fees;

(5) The type of information sought and the uses for information gathered;

(6) The people or entities who will have access to the results;

(7) The approximate length of time required to produce any reports or written results;

(8) Applicable limits on confidentiality; and

(9) Whether the psychologist has been engaged to provide testimony based on the report or written results in a court of law.

(d) Child Custody Evaluations.

(1) The primary consideration in a child custody evaluation is to assess the individual and family factors that affect the best psychological interests of the child, who is the client. Other factors or specific factors may also be addressed given a specific forensic services engagement.

(2) Child custody evaluations generally involve an assessment of the adults' capacity for parenting, an assessment of the psychological functioning, developmental needs, and wishes of the child, and the functional ability of each parent to meet such needs. Other socioeconomic factors, family, collateral and community resources may also be taken into secondary consideration.

(3) The role of the psychologist in a child custody forensic engagement is one of a professional expert. The psychologist cannot function as an advocate and must retain impartiality and objectivity, regardless of whether retained by the court or a party to the divorce. The psychologist must not perform an evaluation where there has been a prior therapeutic relationship with the child or the child's immediate family members, unless required to do so by court order.

(4) The scope of the evaluation is determined by the psychologist based on the referral question(s). Licensees must comprehensively perform the evaluation based on the scope of the referral, but not exceed the scope of the referral.

(e) Child Visitation.

(1) A licensee who provides therapy and/or counseling to a child must limit forensic testimony to statements for which the licensee has sufficient basis pursuant to Board rule §465.10 of this title (relating to Basis for Scientific and Professional Judgements).

(2) Prior to stating a visitation recommendation, a licensee must include a statement as to all pertinent limitations pursuant to Board rule §465.16(c) of this title (relating to Evaluation, Assessment, Testing and Reports).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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22 TAC §465.22

The Texas State Board of Examiners of Psychologists proposes amendments to §465.22, Psychological Records, Test Data and Test Protocols. The amendments are being proposed to correct grammatical and punctuation errors in this rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.22. Psychological Records, Test Data and Test Protocols.

(a) General Requirements.

(1) All licensees shall create and maintain accurate, current, and pertinent records of all psychological services rendered by or under the supervision of the licensee.

(2) All records shall be sufficient to permit planning for continuity in the event that another care provider takes over delivery of services to a patient or client for any reason, including the death, disability or retirement of the licensee and to permit adequate regulatory and administrative review of the psychological service.

(3) All licensees shall identify impressions and tentative conclusions as such in patient or client records.

(4) All records and record entries shall be created in as timely a manner as possible after the delivery of the specific services being recorded.

(5) Records, test data and test protocols [~~protocol~~] shall be maintained and stored in a way that permits review and duplication.

(6) Licensees working in public school settings shall comply with all federal and state laws [~~legislation~~] and regulations relative to the content, maintenance, control, access, retention and destruction of psychological and educational records, test data and test protocols.

(7) Licensees are prohibited from falsifying, altering, fabricating, or back-dating patient records and reports.

(b) Maintenance and Control of Records and Test Data.

(1) Licensees shall maintain records and test data in a manner that protects the confidentiality of all services delivered by the licensee.

(2) Licensees are responsible for the maintenance, confidentiality and contents of, and access to, all records and test data.

(3) Licensees shall make all reasonable efforts to protect against the misuse of any record or test data.

(4) Licensees shall maintain control over records and test data to the extent necessary to ensure compliance with all applicable Board rules and all state and federal laws.

(5) In situations where it becomes impossible for a licensee to maintain control over records and test data as required by applicable Board rule and state and federal law, the licensee shall make all necessary arrangements for transfer of the licensee's records to another licensee who will ensure compliance with all applicable Board rules and state and federal laws concerning records.

(6) Records and test data of psychological services rendered by a licensee as an employee of an agency or organization remain the property of the employing agency upon termination of the employment of the individual unless legal ownership of such records is controlled by applicable state or federal law or legal agreement.

(c) Access to Records and Test Data.

(1) Records shall be entered, organized and maintained in a manner that facilitates their use by all authorized persons.

(2) Records may be maintained in any media that ensure confidentiality and durability.

(3) A licensee shall release information about a patient or client only upon written authorization by the patient, client or appropriate legal guardian pursuant to a proper court order or as required by applicable state or federal law.

(4) Test data are not part of a patient's or client's record. Test data are not subject to subpoena. Test data shall be made available only:

(A) to another qualified mental health professional and only upon receipt of written release from the patient or client, or

(B) pursuant to a court order.

(5) Licensees cooperate in the continuity of care of patients and clients by providing appropriate information to succeeding qualified service providers as permitted by applicable Board rule and state and federal law.

(6) Licensees who are temporarily or permanently unable to practice psychology shall implement a system that enables their records to be accessed in compliance with applicable Board rules and state and federal law.

(7) Access to records may not be withheld due to an outstanding balance owed by a client for psychological services provided prior to the patient's request for records. However, licensees may impose a reasonable fee for review and/or reproduction of records and are not required to permit examination until such fee is paid, unless there is a medical emergency or the records are to be used in support of an application for disability benefits.

(8) No later than 15 days after receiving a written request from a patient to examine or copy all or part of the patient's mental health records, a psychologist shall:

(A) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(B) inform the patient in writing that the information does not exist or cannot be found; or

(C) provide the patient with a signed and dated statement that having access to the mental health records would be harmful to the patient's physical, mental or emotional health. The written statement must specify the portion of the record being withheld, the reason for denial and the duration of the denial.

(d) Retention of Records and Test Data.

(1) Licensees shall comply with all applicable laws, rules and regulations concerning record retention.

(2) In the absence of applicable state and federal laws, rules and regulations, records and test data shall be maintained for a minimum of ten years after the last contact with the client. If the client is a minor, the record retention period is extended until ten years after the minor reaches the age of majority.

(3) All records shall be maintained in a manner which permits timely retrieval and production.

(e) Outdated Records.

(1) Licensees take reasonable steps when disclosing records to note information that is outdated [~~of an outdated nature~~].

(2) Disposal of records shall be done in an appropriate manner that ensures confidentiality of the records [~~record~~] in compliance with applicable Board rules [~~rule~~] and state and federal laws [~~law~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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22 TAC §465.37

The Texas State Board of Examiners of Psychologists proposes amendments to §465.37, Compliance with All Applicable Laws. The amendments are being proposed to identify an important state law to which licensees must adhere.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this proposal.

§465.37. Compliance with All Applicable Laws.
Licensees comply with all applicable state and federal laws affecting the practice of psychology including, but not limited to:

(1) Texas Health and Safety Code, Chapter 611, Mental Health Record;

(2) Texas Family Code

(A) Chapter 32, Consent to Medical, Dental, Psychological and Surgical Treatment,

(B) Chapter 153, Rights to Parents and Other Conservators to Consent to Treatment and Access to Child's Records, and

(C) Chapter 261, Duty to Report Child Abuse and Neglect;

(3) Texas Human Resource Code, Chapter 48, Duty to Report Elder Abuse and Neglect;

(4) Texas Civil Practice and Remedy Code, Chapter 81, Duty to Report Sexual Exploitation of a Patient by a Mental Health Services Provider; and

(5) Texas Insurance Code as it relates to submission of billing and third-party payments for mental health services provided by a licensee.

(6) Texas Code of Criminal Procedure Chapter 46B, Incompetency to Stand Trial, Articles 46B and 46C as they relate to the access and distribution of forensic evaluations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.9

The Texas State Board of Examiners of Psychologists proposes amendments to §470.9, Witness Fees. The amendments are being proposed to make grammatical corrections to the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this proposal.

§470.9. Witness Fees.

Persons appearing as witnesses before the Board [~~board~~] in an administrative hearing process (i.e., depositions, hearings, meetings, etc.) will receive reimbursement for expenses incurred. These expenses include travel, lodging, and up to $40 per day for meals and other expenses. Airfare is reimbursed at the lowest available fare.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2008.

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Executive Director
Texas State Board of Examiners of Psychologists
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 19. ELECTRONIC REPORTING

SUBCHAPTER C. USE OF ELECTRONIC REPORTING

30 TAC §19.21

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §19.21.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of the proposed rule is to implement House Bill (HB) 1254 of the 80th Legislature, 2007. The bill, which became effective September 1, 2007, authorizes the commission to adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. The proposed new rule implements HB 1254.

SECTION DISCUSSION

The commission proposes new §19.21, Fees, in Chapter 19, Electronic Reporting. The proposed new section will implement HB 1254 by stating that the commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. Although the proposed section does not change specific fees, the inclusion of this section will serve as an advance notice that the commission may consider fee changes in the future for this purpose.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule.

The purpose of the proposed rule is to implement HB 1254, 80th Legislature, Regular Session. The bill authorizes the commission to adjust fees as necessary to encourage electronic reporting and use of the commission's electronic document receiving system, and the proposed rule would add new §19.21, Fees, to Chapter 19 to do so. The proposed new section does not change specific fees at this time, but it will allow other sections of the TAC to be opened in the future to amend fees for those that utilize the agency's electronic document receiving system. When the commission considers specific fee changes, pertinent sections of the TAC may be opened under separate rulemakings. When future rules are proposed, the commission will conduct a fiscal analysis of proposed fee changes.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be in compliance with state law.

The proposed rule would add new section §19.21, Fees, to Chapter 19 to adjust fees as necessary to encourage electronic reporting and use of the commission's electronic document receiving system. The proposed new section does not change specific fees at this time and will not have a fiscal impact on businesses or individuals.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. The proposed rule states that the commission may adjust fees as necessary to encourage electronic reporting and use of the commission's electronic document receiving system. The proposed new section does not change specific fees at this time and will not have a fiscal impact on small or micro-businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years that the proposed rule is in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of this proposed rulemaking action is to implement HB 1254 of the 80th Legislature, 2007. The bill, which became effective September 1, 2007, authorizes the commission to adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. The proposed rulemaking is procedural in nature and does not address environmental risks or exposures. Therefore, the proposed rulemaking does not constitute a major environmental rule, and is not subject to a formal regulatory analysis.

Additionally, the rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking does not meet any of the four applicability requirements in Texas Government Code, §2001.0225(a). Since there is no federal law establishing a standard for the commission's adjustment of fees to encourage electronic reporting, this rulemaking does not exceed a standard set by federal law. HB 1254 grants the commission authority to adjust fees as necessary to encourage electronic reporting and use of the commission's document receiving system, but states nothing further to establish a particular standard as to the manner in which the commission may do so. Since this rulemaking proposes to implement the bill consistent with the legislation, it does not exceed the requirements of state law. This rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to assess fees, but is instead proposed to be consistent with state statute. This rulemaking is not proposed solely under the general powers of the agency because it is proposed to implement Texas Water Code, §5.128(a), which authorizes the commission to adjust fees. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The specific purpose of this proposed rulemaking is to implement HB 1254, which authorizes the commission to adjust fees to encourage electronic reporting and the use of the commission's electronic document receiving system. The proposed rule would substantially advance these purposes by giving notice to those who use the commission's electronic document receiving system that fees may be adjusted.

Promulgation and enforcement of the proposed rule would constitute neither a constitutional nor a statutory taking of private real property. There are no burdens imposed on private real property under this rule because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real property. Also, the rule does not result in a reduction in property value. The rule is only procedural in nature. Therefore, the proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 27, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact John Gaete, Office of Legal Services, at (512) 239-6091. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to John Gaete, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-050-19-PR. The comment period closes March 31, 2008. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ellette Vinyard, Permitting and Remediation Support Division, (512) 239-6085.

STATUTORY AUTHORITY

The new rule is proposed under Texas Water Code (TWC), §5.013, which establishes the commission's general jurisdiction; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which allows the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; §5.105, which requires the commission to, by rule, establish and approve all general policy of the commission; §5.128, which authorizes the commission to encourage the use of electronic reporting; and to adjust fees as necessary to encourage electronic reporting and use of the commission's document receiving system.

The proposed new rule implements TWC, §§5.013, 5.102, 5.103, 5.105, and 5.128.

§19.21. Fees.

The commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800959
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-6091

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CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES
SUBCHAPTER L. ON-ROAD ENGINES
DIVISION 1. HEAVY-DUTY DIESEL ENGINES

30 TAC §§114.700 - 114.702, 114.706, 114.707, 114.709

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Environmental Quality (commission or TCEQ) proposes the repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709.

The proposed repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

In 1998, the federal government and seven heavy-duty diesel engine (HDDE) manufacturers entered into consent decrees after enforcement actions were brought against HDDE manufacturers that a majority of the diesel engine manufacturers had programmed their engines to defeat federal test procedures (FTP) which were established to measure compliance with the EPA promulgated diesel emission standards in effect at the time. A so-called "defeat device" was employed because its use would provide some increase in fuel economy. However, its use would also cause the engine to produce higher nitrogen oxides (NO_x) emissions while the engine was running in the open-road or cruise mode.

In the consent decrees, the manufacturers were required, among other things, to produce HDDE that met a 2.5 gram per brake horsepower-hour standard for non-methane hydrocarbons plus NO_x emissions by no later than October 1, 2002. The consent decrees also required the manufacturers to comply with supplemental test procedures for a period of two years (2003 and 2004). The two components of the supplemental tests are known as the "Not to Exceed" (NTE) test and the Euro III European Stationary Cycle test. However, the EPA's NTE rules for HDDE that would include the NTE test requirements were delayed until model year 2007. This delay resulted in a regulatory gap for two model years (2005 and 2006) between

the expiration for the NTE test requirements under the consent decree following model year 2004 and the commencement of NTE test requirements for model year 2007. To prevent any "backsliding" by HDDE manufacturers during the 2005 and 2006 model years, the California Air Resources Board (CARB) adopted rules under Title 13, California Code of Regulations (13 CCR) §1956.8 on December 8, 2000. The rules were effective on July 25, 2001, requiring HDDE manufacturers to comply with supplemental procedures including the NTE test.

The TCEQ originally adopted the rules under Subchapter L in August 2001 to join with California and twelve other states to prevent potential significant increases in diesel exhaust emissions due to possible "backsliding" by engine manufacturers due to the absence of federal standards during the 2005 and 2006 model years. The EPA's implementation of federal emission control standards (66 *Federal Register* 5001, January 18, 2001) including NTE standards, for 2007 and newer model year HDDE and heavy-duty on-highway (HDOH) vehicles mitigates the original justification for Texas to require CARB-certified HDDE since the federal standards now require HDDE manufacturers to meet emission limits for 2007 and newer HDDE and HDOH vehicles that are equivalent to the California standards required under Subchapter L.

On June 27, 2007, the Commission directed staff to initiate rulemaking to propose the repeal of Subchapter L based on their consideration of a petition from the Engine Manufacturers Association (EMA) and the executive director's support for repealing these rules to address issues raised by the petitioner.

The current regulations under Subchapter L require all HDDE produced for sale or other use in Texas for the 2005 and newer model years to be certified to meet the California emission control standards specified under 13 CCR §1956.8 that were revised by CARB on December 8, 2000, and effective on July 25, 2001. The EMA petition requested the TCEQ to initiate rulemaking to repeal Subchapter L to allow for the sale or other use in Texas of any 2008 or newer model year HDDE that are certified by the EPA as compliant with all applicable EPA emission control regulations.

The EMA claims that revisions by CARB to 13 CCR §1956.8 effective on November 15, 2006, enacting additional emission control requirements for automatic engine idle shutdown devices on 2008 and newer model year HDDE impact the validity of TCEQ's current regulations under Subchapter L since these rules are no longer consistent with California's new rules. The EMA contends that subsequent implementation of TCEQ's regulations under Subchapter L may be construed as a violation of the identicality (i.e. "no third car") requirement in Section 177 of the Clean Air Act (42 United States Code (USC), §7507).

The Clean Air Act allows states to adopt and implement vehicle and engine emission standards that are more stringent then federal requirements if the standards are identical to the California standards for which a waiver has been granted by the EPA for the model years affected by the standards. However, Section 177 of the Clean Air Act (42 USC, §7507) prohibits states from taking "any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a "third vehicle") or otherwise create such a "third vehicle."

SECTION BY SECTION DISCUSSION

The proposed repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709 would remove regulations that have been rendered unnecessary by the EPA's implementation of federal emission control standards (66 *Federal Register* 5001, January 18, 2001), including NTE standards, for 2007 and newer model year HDDE and HDOH vehicles that require HDDE manufacturers to meet emission limits that are equivalent to the California standards required under §§114.700 - 114.702, 114.706, 114.707, and 114.709. Repealing these sections would provide regulatory flexibility by allowing persons selling or offering to sell new HDDE and HDOH vehicles in Texas with the option of selling new 2008 and newer HDDE and HDOH vehicles that are either certified by the EPA or by CARB, while having no impact on the regulated emissions currently affected by these rules. In addition, the proposed repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709 would eliminate the potential violation of the identicality (i.e. "no third car") requirement in Section 177 of the Clean Air Act (42 USC, §7507) that would occur if the TCEQ enforced the rules specified under §§114.700 - 114.702, 114.706, 114.707, and 114.709 to require 2008 and newer model year HDDE and HDOH vehicles to be certified to meet the California emission control standards referenced by these rules.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed repeals are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rulemaking would repeal Chapter 114, Subchapter L, which regulates the types of HDDE and HDOH vehicles that can be sold in Texas, in its entirety. Persons selling or offering for sale HDDE or HDOH vehicles would, by default, be able to sell vehicles certified by either the EPA or by the CARB. The proposed rules will have no fiscal implications on the agency because emission modeling used by the agency in the SIP already uses current 2007 federal emission standards for HDDE and HDOH vehicles. Other state agencies or local governments will not be affected by the proposed rules since they do not sell these types of vehicles.

The proposed rulemaking would repeal §§114.700 - 114.702, 114.706, 114.707, and 114.709 (Subchapter L). Repealing Subchapter L would remove an out-dated regulation; provide regulatory flexibility by allowing persons selling or offering to sell new HDDE engines and HDOH vehicles in Texas with the option of selling HDDE and HDOH vehicles that are either certified by EPA or by CARB, thus having no impact on the regulated emissions currently affected by these rules; and eliminate the potential violation of the identicality (i.e. "no third car") requirement in Section 177 of the Clean Air Act that would occur if the TCEQ enforced the rules specified under §§114.700 - 114.702, 114.706, 114.707, and 114.709 to require 2008 and newer model year HDDE and HDOH vehicles to be certified to meet the California emission control standards referenced by these rules Repeal of the current rules would guarantee that Texas rules would comply with the Clean Air Act because only EPA rules or CARB rules, as allowed by the Act, would govern.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from the changes seen in the proposed rulemaking will be consistency between state and federal regulations and flexibility for sellers and buyers of HDDE and HDOH vehicles to

sell or buy either EPA approved vehicles or those complying with CARB standards.

The proposed repeal is not expected to have any fiscal implications for persons or entities selling or offering for sale HDDE and HDOH vehicles since these persons or entities would have the option of supplying vehicles that are certified by either EPA or CARB. Buyers of these vehicles are not expected to experience fiscal implications as a result of the proposed repeal of rules since they would have the option of buying either EPA or CARB certified HDDE or HDOH vehicles.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that sell or buy HDDE or HDOH vehicles as a result of the proposed repeal of rules. Small or micro-businesses would have the option of selling or buying vehicles certified by either the EPA or CARB.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709 considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of this proposal is to repeal the heavy duty diesel engine requirements in state rule because these have been rendered unnecessary by the EPA's implementation of federal emission control standards. The repeal itself does not specifically protect human health or the environment, or adversely affect materially the economy, productivity, competition, jobs, etc. Therefore, the repeal does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

In addition, the proposed repeal of §§114.700 - 114.702, 114.706, 114.707, and 114.709 is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposal does not meet any of the four applicability requirements. Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, this rulemaking action, which is designed to repeal provisions in state rule that have potentially become prohibited by federal law due to changes to CARB rules initially incorporated by reference in state rule, does not exceed an express requirement under state or federal law. Furthermore, there is no contract or delegation agreement that covers the topic that is the subject of this action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.012, 382.017, 382.019, and 382.208. Therefore, the repeal does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is adopted solely under the general powers of the agency.

Based on the foregoing, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or by Article 1, Texas Constitution, §17 or §19; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The specific purpose of this proposed rulemaking is to repeal §§114.700-114.702, 114.706, 114.707, and 114.709, which would provide regulatory flexibility by allowing persons selling or offering to sell new HDDE and HDOH vehicles in Texas with the option of selling new 2008 or newer HDDE and HDOH vehicles that are either certified by the EPA or by CARB, while having no impact on the regulated emissions currently affected by these rules. The proposed repeal of §§114.700-114.702, 114.706, 114.707, and 114.709 will not place a burden on private, real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed repeal will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed rulemaking will ensure that the amendments comply with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal at the following time and location: March 20, 2008, 10:00 a.m., Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Kristin Smith, General Law Division, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Kristin Smith, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-056-114-EN. The comment period closes March 26, 2008. Copies of the proposed rule can be obtained from the commission's Website at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Morris Brown of the Air Quality Division at (512) 239-1438.

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The repeals are also proposed under Texas Health and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.019, concerning Methods Used to Control and Reduce Emissions from Land Vehicles, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; and THSC, §382.208, concerning Attainment Program, which authorizes the commission to coordinate with federal, state and local transportation planning agencies to develop and implement programs and other measures necessary to protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed repeals implement TWC, §5.103 and §5.105, and THSC, §§382.002, 382.011, 382.012, 382.017, 382.019, and 382.208.

§114.700. Definitions.

§114.701. Applicability.

§114.702. Adoption and Incorporation by Reference of California Rules Regarding Exhaust Emission Standards.

§114.706. Recordkeeping Requirements.

§114.707. Exemptions and Technology Review.

§114.709. Affected Counties and Compliance Schedules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800943
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-0177

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CHAPTER 230. GROUNDWATER AVAILABILITY CERTIFICATION FOR PLATTING

30 TAC §§230.1 - 230.3, 230.9

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§230.1 - 230.3 and §230.9.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed amendments is to implement Senate Bill (SB) 662, 80th Texas Legislature, 2007, by requiring certain plat applicants to transmit to the Texas Water Development Board (TWDB) and any applicable groundwater conservation district (GCD) information that would be useful in performing GCD activities, conducting regional water planning, maintaining the TWDB's groundwater database, or conducting state studies on groundwater. Under Local Government Code, §212.0101 and §232.0032, a municipal authority responsible for approving plats by ordinance or the commissioner's court of a county by order (respectively) may require a person who submits a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land, to have attached to it a statement that is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state and certifies that adequate groundwater is available for the subdivision.

Local Government Code, §212.0101(b) and §232.0032(b) both require the commission, by rule, to establish the appropriate form and content of a certification to be attached to a plat application. Local Government Code, §212.0101(c) and §232.0032(c), both added by SB 662, require the commission, in consultation with the TWDB, by rule, to require a person who submits a plat to transmit the information to the TWDB and any applicable GCD. SB 662 became effective on September 1, 2007, and requires the commission's rules be adopted before January 1, 2009.

If the use of Chapter 230, Groundwater Availability Certification for Platting, is required by a municipal or county platting authority, plat applicants must provide the Certification of Groundwater Availability for Platting form under §230.3(c) to the municipal or county platting authority. Plat applicants must provide the information, estimates, data, calculations, and determinations required to support the certification to the municipal or county platting authority upon request. Plat applicants are not presently required to provide this information to the commission, the TWDB, or to any applicable GCD. The proposed amendments will require these plat applicants to transmit the data to the TWDB and applicable GCDs. The data will be used for groundwater management evaluation and planning purposes required by Texas Water Code (TWC), Chapter 16 for the TWDB, and TWC, Chapter 36, for the GCDs.

SECTION BY SECTION DISCUSSION

Proposed amendments to §230.1, Applicability, make a conforming citation change and add requirements for plat applicants to transmit information to the executive administrator of the TWDB and any applicable GCD, as added by SB 662, 80th Legislature, 2007. The proposed amendment in subsection (a) changes and conforms the reference from Local Government Code, §232.0031 to §232.0032. The proposed amendments add new subsection (c), Transmittal of Data, to provide the requirements for plat applicants to transmit information to the executive administrator of the TWDB and the applicable GCD or GCDs. If use of Chapter 230 is required by the municipal or county platting authority, proposed subsection (c) requires the plat applicant to: provide copies of the information, estimates, data, calculations, determinations, statements, and the certification described in Chapter 230 to determine groundwater quality, availability, and usability to the executive administrator of the TWDB and the applicable GCDs; and, attest that copies of this information have been provided. The proposed amendments add new Figure: 30 TAC §230.1(c)(2), Transmittal of Data. This form will be used and signed by the plat applicant to attest that copies of information have been transmitted as required by the Local Government Code and Chapter 230. The executive director is allowed to make minor changes to this form which do not conflict with the requirements of the chapter. The commission proposes these amendments to implement Local Government Code, §212.0101(c) and §232.0032(c), as added by SB 662, 80th Legislature, 2007.

Proposed amendment to §230.2, Definitions, adds two new definitions and moves the term "plat applicant" into alphabetical order in the list of definitions. The definition for "Applicable groundwater conservation district or districts" is added as new paragraph (1). An applicable groundwater conservation district would be defined as any district or authority created under Texas Constitution, Article III, Section 52, or Article XVI, Section 59, that has the authority to regulate the spacing of water wells, the production from water wells, or both, and which includes within its boundary any part of the plat applicant's proposed subdivision. The definition for "executive administrator" is added as new paragraph (6) to mean the executive administrator of the TWDB. The commission proposes to add these definitions to implement Local Government Code, §212.0101(c) and §232.0032(c), as added by SB 662, 80th Legislature, 2007. The commission also proposes to move the term "plat applicant" from definition (7) to definition (10) so that the list of terms in §230.2 is in alphabetical order.

Proposed amendment to §230.3, Certification of Groundwater Availability for Platting, adds the requirement for plat applicants to provide a copy of the Certification of Groundwater Availability for Platting form to the executive administrator of the TWDB and to any applicable GCD and update Figure: 30 TAC §230.3(c). This proposed amendment to subsection (b) requires these plat applicants to transmit the certification form to the TWDB and applicable GCDs to use for the groundwater management evaluation and planning purposes required by TWC, Chapters 16 and 36. The first proposed amendment to Figure: 30 TAC §230.3(c) is limited to a conforming statutory citation change on the second line of the "Use of this form" notation. This proposed amendment changes and conforms the reference from Local Government Code, §232.0031 to §232.0032. The second proposed amendment to Figure: 30 TAC §230.3(c) updates the "note" on line 18 by referring users to the most recent State Water Plan for general information on the state's aquifers. The commission proposes this change because the TWDB has added an aquifer and changed aquifer boundaries since the previously referenced report was published in 1995. The commission proposes these amendments to implement Local Government Code, §212.0101(c) and §232.0032(c), as added by SB 662, 80th Legislature, 2007.

Proposed amendment to §230.9, Determination of Groundwater Quality, updates paragraph (3) to reflect the change in state authority for laboratory accreditation and certification from the Texas Department of Health to the TCEQ as part of House Bill 2912, 77th Legislature, 2001. The conforming change in the proposed amendment to paragraph (3) removes the reference to the Texas Department of Health and provides cross references to commission laboratory accreditation and certification rules in 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed

rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The TWDB, applicable GCDs, and platting authorities are expected to receive additional groundwater information that will aid them in state and regional water planning activities.

The proposed amendments have two purposes: to implement the provisions of SB 662, 80th Legislature, Regular Session regarding transmission of useful groundwater conservation data to the TWDB and applicable GCDs by plat applicants and to make non-substantive revisions for legal citations to the pertinent parts of the Local Government Code. Under current statute, platting authorities have the option to require a plat applicant to certify that adequate groundwater is available to supply water for a proposed subdivision. Prior rulemakings have established what plat applicants must do and what data must be gathered and submitted to the platting authority if certification is required. Under the proposed rules, the requirement to submit this certification would still be at the discretion of the platting authority. However, if an applicant is required to submit groundwater certification, then the proposed rules would require that the information also be sent to the TWDB and to each GCD in which the proposed subdivision is located. If applicants are allowed to submit groundwater conservation data electronically, there should be no fiscal implications to the applicant, TWDB, or the appropriate GCDs as a result of the proposed rules. If paper submission is required, local governments could see an increase in filing and storage costs. Any increase in these costs is not expected to have a significant fiscal impact on local governments. Increases in filing and storage costs would vary among local governments and depend on each local government's policies and practices. The proposed rules could save GCDs money since they could receive information regarding groundwater availability from plat applicants instead of incurring costs to have separate studies performed to confirm groundwater availability.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be greater protection of the state's groundwater supply and more efficient management of groundwater resources due to the availability of additional, more detailed groundwater data to state and GCD planners.

Plat applicants can range in size from nationwide, corporate land development companies to individual landowners. Plat applicants submitting groundwater data to the TWDB and the appropriate GCD under the proposed rules could see cost increases, although these are expected to be minimal. The proposed rules will require that plat applicants provide copies of all data required to support certification of groundwater availability to the TWDB and the appropriate GCD. If this data can be submitted electronically to the TWDB and the appropriate GCDs, plat applicants should not see a fiscal impact as a result of the proposed rules. If the plat applicant decides to submit, or is required to submit, paper copies of this data, increased copying expenses could be as much as $20 per copy and increased postage costs could be as much as $5 per copy. The total amount of copying and postage costs would depend on the number of GCDs to which the plat applicant must provide groundwater information.

At this time, staff knows of at least 15 counties that require groundwater certification. Fourteen of these counties contain one or more GCDs within their boundaries. These GCDs include: Bandera County River Authority and Ground Water District; Barton Springs-Edwards Aquifer Conservation District; Blanco-Pedernales GCD; Brazos Valley GCD; Cow Creek GCD; Edwards Aquifer Authority; Clearwater GCD; Guadalupe County GCD; Hays-Trinity GCD; Hill Country Underground Water Conservation District (UWCD); Lost Pines GCD; Medina County GCD; Plum Creek Conservation District; Saratoga UWCD; and, Upper Trinity GCD. Staff does not have the data available to know how many more of the state's platting authorities will require groundwater certification in the future, but it is known that established GCDs cover all or part of 145 counties in the state. An additional four counties are covered by GCDs that have been created by legislative acts but remain subject to confirmation by the voters in the subject counties. If a platting authority not currently requiring groundwater certification decides to require certification, a plat applicant could also incur costs to have groundwater availability certified by a licensed professional engineer or geoscientist and well testing costs to comply with certification criteria set forth in previous rulemakings. Since the criteria for groundwater certification is part of current rule, professional and test well costs are not contained in this fiscal note.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-business plat applicants as a result of the proposed rules if they submit groundwater data to the TWDB and appropriate GCDs electronically. If groundwater data is submitted by sending paper copies to TWDB and GCDs, a small or micro-business could expect to see the same cost increases for copying ($20 per copy) and postage ($5 per copy) as that incurred by a large business. This increase is not considered to be a material increase.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect. It is expected that small or micro-businesses will choose to submit required data to the TWDB and the appropriate GCDs electronically.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Administrative Procedure Act. A "major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "major environmental rule" because it is not the specific intent of this rule to protect the environment or reduce risks to human health

from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by SB 662, which require certain plat applicants to transmit to the TWDB and any applicable GCD information that would be useful in performing GCD activities, conducting regional water planning, maintaining the TWDB's groundwater database, or conducting studies for the state related to groundwater.

Further, the rulemaking does not meet the statutory definition of a "major environmental rule" because the proposed amendments will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. The cost of complying with the proposed amendments is not expected to be significant with respect to the economy as a whole or a sector of the economy, particularly if the plat applicant submits the information electronically. In addition, the proposed amendments could provide a financial benefit to local GCDs, in that the GCDs would receive the plat applicants' data, which would save the time and money required for conducting groundwater availability studies.

Furthermore, the proposed rulemaking does not meet the statutory definition of a "major environmental rule" because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). This section only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking does not meet the four applicability requirements, because the proposed rules: (1) do not exceed a standard set by federal law as there is no federal equivalent for the provisions in the Texas Local Government Code; (2) are specifically required by state law, specifically Local Government Code, §212.0101 and §232.0032 and do not exceed the express requirements of these statutes; (3) do not exceed a requirement of federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program as no such federal delegation agreement exists with regard to the proposed rules; and (4) are not an adoption of a rule solely under the general powers of the commission as the proposed rules are required by SB 662.

The commission invites public comment on this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed amendments and performed an assessment of whether the proposed amendment constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to implement legislative changes enacted by SB 662, which require certain plat applicants to transmit to the TWDB and any applicable GCD information that would be useful in performing GCD activities, conducting regional water planning, maintaining the TWDB's groundwater database, or conducting studies for the state related to groundwater. The proposed amendments would substantially advance this purpose by amending the Chapter 230 rules to incorporate the new statutory requirements.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property, nor does the proposed rulemaking reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The proposed amendments will only affect plat applicants who are already required by the county platting authority or municipality to certify that sufficient groundwater is available as the intended water supply. The plat applicants would be required to submit information useful in performing groundwater conservation district activities, conducting regional water planning, maintaining the state's groundwater database, or conducting studies for the state related to groundwater to the applicable GCD and the executive administrator of the TWDB. Therefore, the proposed rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 27, 2008, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact John Gaete, Office of Legal Services, at (512) 239-6091. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to John Gaete, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-045-230-PR. The comment period closes March 31, 2008. Copies of the proposed rulemaking can be obtained from the commission's Web site at: *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Kelly Mills, Water Rights

Permitting and Availability Section, Water Supply Division at (512) 239-4512.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization is derived from Local Government Code, §212.0101(b) and §232.0032(b), which require the commission to promulgate rules that establish the appropriate form and content of a certification to be attached to a plat application; and as added by Senate Bill 662, Local Government Code, §212.0101(c) and §232.0032(c), which require the commission, in concert with the Texas Water Development Board (TWDB), to promulgate rules requiring a plat applicant to transmit the information to the TWDB and any applicable GCD.

The proposed amendments implement Local Government Code, §212.0101(c) and §232.0032(c).

§230.1. Applicability.

(a) Subdivisions utilizing groundwater as the source of water supply. In the plat application and approval process, municipal and county authorities may require certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply. The municipal or county authority is not required to exercise their authority under Texas Local Government Code, §212.0101 or §232.0032 [~~§232.0031~~]. However, if they do exercise their authority, the form and content of this chapter must be used.

(b) Use of this chapter. If required by the municipal or county authority, the plat applicant and the Texas licensed professional engineer or the Texas licensed professional geoscientist shall use this chapter and the attached form to certify that adequate groundwater is available under the land of a subdivision subject to platting under Texas Local Government Code, §212.004 and §232.001 [~~232.001~~]. These rules do not replace other state and federal requirements applicable to public drinking water supply systems. These rules do not replace the authority of counties within designated priority groundwater management areas under Texas Water Code, §35.019, or the authority of groundwater conservation districts under Texas Water Code, Chapter 36.

(c) Transmittal of data. If use of this chapter is required by the municipal or county authority, the plat applicant shall:

(1) provide copies of the information, estimates, data, calculations, determinations, statements, and certification required by §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data), §230.9 of this title (relating to Determination of Groundwater Quality), §230.10 of this title (relating to Determination of Groundwater Availability), and §230.11 of this title (relating to Groundwater Availability and Usability Statements and Certification) to the executive administrator of the Texas Water Development Board and to the applicable groundwater conservation district or districts; and

(2) using the attached form, attest that copies of the information, estimates, data, calculations, determinations, statements, and the certification have been provided to the executive administrator of the Texas Water Development Board and the applicable groundwater conservation district or districts. The executive director may make minor changes to this form that do not conflict with the requirements of these rules.

Figure: 30 TAC §230.1(c)(2)

§230.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in this section, it shall have the same definition and meaning as used in the practices applicable to hydrology and aquifer testing.

(1) Applicable groundwater conservation district or districts--Any district or authority created under Texas Constitution, Article III, Section 52, or Article XVI, Section 59, that:

(A) has the authority to regulate the spacing of water wells, the production from water wells, or both, and

(B) which includes within its boundary any part of the plat applicant's proposed subdivision.

(2) [~~(1)~~] Aquifer--A geologic formation, group of formations, or part of a formation that contains water in its voids or pores and may be used as a source of water supply.

(3) [~~(2)~~] Aquifer test--A test involving the withdrawal of measured quantities of water from or addition of water to a well and the measurement of resulting changes in water level in the aquifer both during and after the period of discharge or addition for the purpose of determining the characteristics of the aquifer. For the purposes of this chapter, bail and slug tests are not considered to be aquifer tests.

(4) [~~(3)~~] Certification--A written statement of best professional judgement or opinion as attested to on the Certification of Groundwater Availability for Platting Form contained under §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting).

(5) [~~(4)~~] Drinking water standards--As defined in commission rules covering drinking water standards contained in Chapter 290, Subchapter F of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water [~~Supply~~] Systems).

(6) Executive administrator--The executive administrator of the Texas Water Development Board.

(7) [~~(5)~~] Full build out--The final expected number of residences, businesses, or other dwellings in the proposed subdivision.

(8) [~~(6)~~] Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

[~~(7) Plat applicant--The owner or the authorized representative or agent seeking approval of a proposed subdivision plat application pursuant to municipal or county authority.~~]

(9) [~~(8)~~] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(10) Plat applicant--The owner or the authorized representative or agent seeking approval of a proposed subdivision plat application pursuant to municipal or county authority.

(11) [~~(9)~~] Requirements applicable to public drinking water supply systems--The requirements contained in commission rules covering public drinking water supply systems in Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems).

§230.3. Certification of Groundwater Availability for Platting.

(a) Certification. The certification required by this chapter must be prepared by a Texas licensed professional engineer or a Texas licensed professional geoscientist.

(b) Submission of information. The plat applicant shall provide to the municipal or county authority, the executive administrator of the Texas Water Development Board, and the applicable groundwater conservation district or districts the certification of adequacy of groundwater under the subdivision required by this chapter.

(c) Form required. This chapter and the following form shall be used and completed if plat applicants are required by the municipal or county authority to certify that adequate groundwater is available under the land to be subdivided. The executive director may make minor changes to this form that do not conflict with the requirements of these rules.

Figure: 30 TAC §230.3(c)

[~~Figure: 30 TAC §230.3(c)~~]

§230.9. Determination of Groundwater Quality.

(a) Water quality analysis. Water samples shall be collected near the end of the aquifer test for chemical analysis. Samples shall be collected from each aquifer being considered for water supply for the proposed subdivision and reported as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting).

(1) For proposed subdivisions where the anticipated method of water delivery is from an expansion of an existing public water supply system or a new public water supply system, the samples shall be submitted for bacterial and chemical analysis as required by Chapter 290, Subchapter F of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements For Public Water [~~Supply~~] Systems).

(2) (No change.)

(3) Conductivity and pH values may be measured in the field, and the other constituents shall be analyzed in a laboratory accredited by the agency according to Chapter 25, Subchapters A and B of this title (relating to General Provisions and Environmental Testing Laboratory Accreditation, respectively) or certified by the agency according to Chapter 25, Subchapters A and C of this title (relating to General Provisions and Environmental Testing Laboratory Certification, respectively) [~~Texas Department of Health approved laboratory using methods approved by the commission~~].

(b) Submission of information. The information, data, and calculations required by this section shall be made available to the municipal or county authority, if requested, to document the requirements of this section as part of the plat application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800956
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-6091

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CHAPTER 293. WATER DISTRICTS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§293.11, 293.32, 293.41, 293.63, 293.201, and 293.202.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission has the statutory responsibility to create, supervise and dissolve certain water and water-related districts and to review the sale and issuance of bonds for district improvements in accordance with Texas Water Code (TWC), Chapters 12 and 49 through 67. Additionally, commission oversight of district bonds may include review of compliance with bidding procedures allowed by Local Government Code, Chapter 271. The commission oversees approximately 1,300 active and approximately 500 inactive water districts in Texas. Chapter 293 of the commission's rules governs the creation, supervision, and dissolution of all general and special law districts and the conversion of certain districts. Chapter 293 also governs the commission's review of bond applications by districts relating to engineering standards and economic feasibility of district construction project design and completion.

During the 80th Legislative Session, 2007, House Bill (HB) 576, HB 1127, HB 1886, HB 2984, HB 3378, HB 3770, and Senate Bill (SB) 657 were passed which amended TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 271. The proposed rulemaking would establish new requirements or revise existing requirements relating to the administration of water districts and the commission's supervision over districts' actions.

HB 576, 80th Legislative Session, 2007, amends TWC, §49.271(c) to require that a district must accept a bid bond as a bid deposit if a contract is over $250,000.

HB 1127, 80th Legislative Session, 2007, amends TWC, §49.4645(a) to allow districts that are outside of planned community of at least 15,000 acres and within Montgomery County to issue bonds supported by taxes to fund recreational facilities.

HB 1886, 80th Legislative Session, 2007, amends Local Government Code, Chapter 271 to add Subchapter J to allow a local governmental entity, as defined in the bill, limited use of a design-build process to construct defined civil works projects.

HB 2984, 80th Legislative Session, 2007, amends TWC, §53.063 to revise the qualifications to be a supervisor on a board of a Fresh Water Supply District (FWSD), except for a FWSD located wholly or partly in Denton County.

HB 3378, 80th Legislative Session, 2007, amends TWC, §54.016 to add subsections (i) and (j) to allow a city with a certain population, when consenting to the creation of a district or annexation of land by a district, to require that a district's water system meets the fire flow requirements adopted by the city.

HB 3770, 80th Legislative Session, 2007, amends TWC, §54.234 to: allow a petitioner seeking creation of a municipal utility district (MUD) to also request road powers at the time of creation; delete the requirement to have taxing authority before acquiring road powers; delete the requirement for preliminary plan approval by the Texas Transportation Commission; and, define the types of roads that can be acquired, constructed, and financed by a MUD, and conveyed to a municipality, county, or state for operation and maintenance.

Senate Bill (SB) 657, 80th Legislative Session, 2007, amends: TWC, §49.271(c) to increase from $25,000 to $50,000 the

threshold for which a bidder is required to submit a security deposit; TWC, §49.273(d), (e), and (f) to increase thresholds from $25,000 to $50,000 for the requirement to advertise and from $15,000 to $25,000 for the requirement to solicit at least three competitive bids; and, TWC, §49.273 to add subsection (m) to allow the board of a special law district to elect to contract in accordance with TWC §49.273, even if it conflicts with provisions in the district's special law.

SECTION BY SECTION DISCUSSION

§293.11. Information Required to Accompany Applications for Creation of Districts.

The commission proposes to amend §293.11(a)(3)(B) to reflect that a city, in consenting to the creation of a district, may impose a restriction requiring that a district's system meet fire flow requirements. The commission proposes this change to implement TWC, §54.016(i), as added by HB 3378, 80th Legislative Session, 2007. The change made by HB 3378, 80th Legislative Session, 2007, to add TWC, §54.016(i) applies to a city with a population of 500,000 or more located within a county with a population of at least 1.4 million and with the county also having two or more cities with a population of at least 300,000.

The commission proposes to amend §293.11(d) to: add §293.11(d)(11) to reflect that a petitioner seeking creation of a MUD may also request that road powers be granted, and renumber existing §293.11(d)(11) as §293.11(d)(12). The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

§293.32. Qualifications of Directors.

The commission proposes to amend §293.32(a)(1) to reflect revised qualifications for a supervisor on a board of a FWSD, except for a FWSD located wholly or partly in Denton County. The commission proposes this change to implement TWC, §53.063, as amended by HB 2984, 80th Legislative Session, 2007.

§293.41. Approval of Projects and Issuance of Bonds.

The commission proposes to amend §293.41(e) to reflect that a district located outside of a planned community of at least 15,000 acres and wholly or partly within Montgomery County may issue bonds supported by taxes to fund recreational facilities. The commission proposes this change to implement TWC, §49.4645, as amended by HB 1127, 80th Legislative Session, 2007.

§293.63. Contract Documents for Water District Projects.

The commission proposes to amend §293.63(4) to reflect that a district must accept a bid bond, meeting all applicable requirements, as a bid deposit if a contract is over $250,000. The commission proposes this change to implement TWC, §49.271(c), as amended by HB 576, 80th Legislative Session, 2007.

The commission proposes to amend §293.63(4) to reflect an increase in the threshold from $25,000 to $50,000 for which a bidder is required to submit a security deposit. The commission proposes this change to implement TWC, §49.271(c), as amended by SB 657, 80th Legislative Session, 2007.

The commission proposes to add §293.63(8) to reflect: an increase in the threshold from $25,000 to $50,000 for the requirement to advertise a district project; an increase in the threshold from $15,000 to $25,000 for the requirement to solicit at least three competitive bids; and a change in the notice publication requirement from three to two consecutive weeks. The commission proposes this change to implement TWC, §49.273(d), (e), and (f), as amended by SB 657, 80th Legislative Session, 2007.

The commission proposes to add §293.63(9) to reflect that the board of a special law district may elect to contract in accordance with TWC, §49.273, even if it conflicts with provisions in the district's special law. The commission proposes this change to implement TWC, §49.273(m), as added by SB 657, 80th Legislative Session, 2007.

The commission proposes to add §293.63(10) to reflect that a district with a population of more than 100,000 may use on a limited basis the design-build process to construct defined civil works projects. The commission proposes this change to implement Local Government Code, Chapter 271, Subchapter J, as added by HB 1886, 80th Legislative Session, 2007. The changes made by HB 1886, 80th Legislative Session, 2007, to add Local Government Code, Chapter 271, Subchapter J, regarding districts would apply to less than one percent of the total number of water districts subject to Chapter 293.

§293.201. District Acquisition of Road Utility District Powers.

The commission proposes to amend §293.201 to reflect that road powers may be obtained at the time of creation of a MUD in addition to the existing provision for obtaining road powers after creation, and state the eligibility of roads that can be acquired, constructed, and financed by a MUD, and conveyed to a municipality, county, or state for operation and maintenance. The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

§293.202. Application Requirements for Commission Approval.

The commission proposes to amend §293.202 to: place existing requirements under new subsection (a) and modifying those requirements to reflect that road powers in lieu of road utility district powers can be obtained; delete the requirement that a MUD have taxing authority to obtain road powers; and delete the requirement that preliminary plans be approved by the Texas Transportation Commission. The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

The commission proposes to amend §293.202 to add subsection (b) to reflect that road powers may be obtained at the time of creation of a MUD with applicable application requirements. The commission proposes this change to implement TWC, §54.234, as amended by HB 3770, 80th Legislative Session, 2007.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The agency will implement the proposed rules utilizing existing agency resources.

During the 80th Legislature, Regular Session, HB 576, HB 1127, HB 1886, HB 2984, HB 3378, HB 3770, and SB 657 were passed to amend TWC, Chapters 49, 53, and 54, and Local Government Code, Chapter 271. The proposed rulemaking would revise existing requirements or establish new requirements required by this legislation relating to the administration of water districts and the commission's supervision over the actions of these local governments. Specifically, the proposed rulemaking would: require

the acceptance of bid bonds for contracts over $250,000; allow certain districts in Montgomery County to issue tax supported bonds to fund recreational facilities; allow the construction of defined civil works projects under certain conditions; revise the qualifications for supervisors on the board of certain FWSDs except for those in Denton County; require water districts to adopt municipal fire flow requirements under certain conditions; allow the request of authorization to build roads under certain conditions at the time there is a request to create MUD; and increase the required threshold amounts for the solicitation of competitive bids and security deposits.

There are approximately 1,300 active water districts, which include 718 MUDs in the state. Additionally, staff estimates that it processes 50 MUD creations per year. The proposed rules are not expected to have a significant fiscal impact on these water districts because they are largely voluntary in nature. Water districts in Montgomery County can choose whether they wish to construct new recreational facilities. Municipalities can choose to consent to the creation of a water district or to a district's annexation of land. Provisions of the proposed rules that govern the conduct of purchasing decisions should provide districts with more efficient, protective administrative processes and save an estimated $2,000 in advertising costs by not having to solicit bids on projects costing less than $50,000. If a petitioner seeking creation of a MUD also requests road powers at the same time, then this could save a MUD that might later solicit the same road powers about $30,100 to prepare and submit an application.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and increased local control of water district actions.

The proposed rules mainly affect local governments. However, a petition for the creation of a MUD may incur costs of approximately $5,000 to solicit road powers at the same time. This is not expected to have a significant fiscal impact since it is expected that these costs would be recouped through the sale of homes or land in the development.

Businesses that might build recreational facilities in Montgomery County are expected to benefit from the proposed rules since districts in this county could decide to provide more recreational facilities to their constituents.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that might develop land and apply for MUD creation. Any costs incurred by small or micro-businesses that might develop land and submit an application for road powers at the time of applying for the MUD is expected to recoup application fees for road development when homes or land are sold. Small or micro-businesses building recreational facilities in Montgomery County are expected to benefit from increased business revenues since the proposed rules provide districts with more powers to build these facilities.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are needed to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the Texas Administrative Procedures Act. The act defines a "major environmental rule" as "a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." Texas Government Code §2001.0225(g)(3).

The specific intent of the proposed rules contained herein is to amend the rules to be consistent with recent legislative enactments. Specifically, the proposed rules address the administration of water districts relating to the bidding requirements (HB 576), the use of tax bonds to fund recreational facilities (HB 1127), the ability of a government entity to use a design-build process to construct civil works projects (HB 1886), the qualifications of a FWSD's supervisors (HB 2984), a city conditioning consent on fire flow requirements (HB 3378), acquisition of road powers by a MUD (HB 3770), as well as other bidding requirements (SB 657). The commission has determined that none of the amendments made to implement the foregoing legislation are made with the specific intent to protect the environment or reduce risks to human health from environmental exposure. Accordingly, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of "major environmental rule" as defined in the act.

The commission invites public comment of the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to implement certain recently enacted legislation relating to the administration of districts. The proposed rules address the administration of water districts relating to the bidding requirements (HB 576), the use of tax bonds to fund recreational facilities (HB 1127), the ability of a government entity to use a design-build process to construct civil works projects (HB 1886), the qualifications of a FWSD's supervisors (HB 2984), a city conditioning consent on fire flow requirements (HB 3378), acquisition of road powers by a MUD (HB 3770), as well as other bidding requirements (SB 657). This rulemaking substantially advances this stated purpose by making the commission's rules consistent with the new statutory language. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action does not affect private real property.

Promulgation and enforcement of these proposed rules will constitute neither a statutory nor a constitutional taking of private real property. The proposed regulations do not adversely affect a landowner's rights in private real property, in whole or in part, temporarily or permanently, because this rulemaking does not burden nor restrict the owner's right to property. More specifically, these rules implement legislation addressing to the administration of districts relating to the bidding requirements (HB 576), the use of tax bonds to fund recreational facilities (HB 1127), the ability of a government entity to use a design-build process to construct civil works projects (HB 1886), the qualifications of a FWSD's supervisors (HB 2984), a city conditioning consent on fire flow requirements (HB 3378), acquisition of road powers by a MUD (HB 3770), as well as other bidding requirements (SB 657). These provisions do not impose any burdens or restrictions on private real property. Therefore, the proposed amendments do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on March 27, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments submitted via the eComments system. All comments should reference Rule Project Number 2007-047-293-PR. The comment period closes March 31, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Randy Nelson, Water Supply Division, at (512) 239-6160.

SUBCHAPTER B. CREATION OF WATER DISTRICTS

30 TAC §293.11

STATUTORY AUTHORITY

This amendment is proposed under the authority of Texas Water Code (TWC), §54.016, as amended by House Bill (HB) 3378, which provides that when city consent is required for the creation of a district, the city may require the district's system to meet fire flow requirements; and TWC §54.234, as amended by HB 3770, which provides that a MUD can acquire road powers during the creation process; and TWC, §5.103 and §5.105, which provide the Texas Commission on Environmental Quality with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas, to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §§5.103, 54.016(i), and 54.234.

§293.11. Information Required to Accompany Applications for Creation of Districts.

(a) Creation applications for all types of districts, excluding groundwater conservation districts, shall contain the following:

(1) - (2) (No change.)

(3) if city consent was obtained under paragraph (2) of this subsection, provide the following:

(A) (No change.)

(B) evidence that the city consent does not place any conditions or restrictions on a district other than those permitted by Texas Water Code (TWC), §54.016(e) and (i);

(4) - (11) (No change.)

(b) - (c) (No change.)

(d) Creation applications for TWC, Chapter 54, Municipal Utility Districts, shall contain items listed in subsection (a) of this section and the following:

(1) - (9) (No change.)

(10) if the application includes a request for approval of a fire plan, information meeting the requirements of §293.123 of this title, except for a certified copy of a district board resolution, references to a district board having adopted a plan, and the additional $100 filing fee; [~~and~~]

(11) if the petition within the application includes a request for road powers, information meeting the requirements of §293.202(b) of this title (relating to Application Requirements for Commission Approval); and

(12) [~~(11)~~] other data and information as the executive director may require.

(e) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800945
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-0177

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SUBCHAPTER D. APPOINTMENT OF DIRECTORS

30 TAC §293.32

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code (TWC), §53.063, as amended by House Bill (HB) 2984, which provides revised qualifications for a supervisor on a board of a FWSD, except one located wholly or partly in Denton County; and, TWC, §5.103, and §5.105, which provide the Texas Commission on Environmental Quality (commission) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §53.063 and §5.103.

§293.32. Qualifications of Directors.

(a) Unless otherwise provided, an applicant for appointment as a director must be at least 18 years old, a resident citizen of Texas, and either own land subject to taxation in the district or be a qualified voter within the district.

(1) A director of a fresh water supply district created under Texas Water Code, Chapter 53: [~~must be a registered voter of the district but need not own land subject to taxation in the district.~~]

(A) must be:

(i) a resident of this state;

(ii) an owner of taxable property in the district; and

(iii) at least 18 years of age; or

(B) if the district is located wholly or partly within Denton County must be a registered voter of the district but need not own land subject to taxation in the district.

(2) - (8) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800946
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-0177

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SUBCHAPTER E. ISSUANCE OF BONDS

30 TAC §293.41

STATUTORY AUTHORITY

The amendment is proposed under the authority of Texas Water Code (TWC), §49.4645, as amended by House Bill (HB) 1127, which provides that a district located outside of planned community of at least 15,000 acres and wholly or partly within Montgomery County may issue bonds supported by taxes to fund recreational facilities; and, TWC, §5.103, and §5.105 which provide the Texas Commission on Environmental Quality with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §49.4645 and §5.103.

§293.41. Approval of Projects and Issuance of Bonds.

(a) - (d) (No change.)

(e) A district located within Bastrop, Bexar, Brazoria, Fort Bend, Galveston, Harris, Montgomery (except for land within a planned community of at least 15,000 acres), Travis, Waller, or Williamson Counties may submit bond applications, which include recreational facilities that are supported by taxes, in accordance with TWC, §49.4645.

(1) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800947
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-0177

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SUBCHAPTER F. DISTRICT ACTIONS RELATED TO CONSTRUCTION PROJECTS AND PURCHASE OF FACILITIES

30 TAC §293.63

STATUTORY AUTHORITY

The amendment is proposed under the authority of the Texas Water Code (TWC), §49.271(c), as amended by House Bill (HB) 576, which provides that a district must accept a bid bond, meeting all applicable requirements, as a bid deposit if a contract is

over $250,000; and as amended by SB 657, which increases the threshold from $25,000 to $50,000 for which a bidder is required to submit a security deposit; and TWC, §49.273(d), (e), and (f), as amended by SB 657, which increases the threshold from $25,000 to $50,000 the requirement to advertise a district project, increases the threshold from $15,000 to $25,000 the requirement to solicit at least three competitive bids, and a change in the notice publication requirement from three to two consecutive weeks; and TWC, §49.273(m), as added by SB 657, which provides that the board of a special law district may elect to contract in accordance with TWC, §49.273 even if it conflicts with provisions in the district's special law; and, Local Government Code, Chapter 271, Subchapter J, as added by HB 1886, which provides that a district with a population of more than 100,000 may use on a limited basis the design-build process to construct defined civil works projects; and, TWC, §5.103 and §5.105, which provide the Texas Commission on Environmental Quality with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission.

The proposed amendment implements TWC, §49.271(c), and §5.103.

§293.63. Contract Documents for Water District Projects.

Contract documents for water district construction projects shall be prepared in general conformance with those adopted and recommended by the Texas Section of the American Society of Civil Engineers (latest revision). The following specific requirements must apply.

(1) - (3) (No change.)

(4) For contracts over $50,000 [~~$25,000~~] the district shall require bidders to submit certified or cashier's checks or a bid bond issued by a surety legally authorized to do business in this state in an amount of at least 2.0% of the total amount of the bid. For a contract greater than $250,000 the district must accept a bid bond if it meets all requirements. If cashier's checks are required, the checks for all bidders except the three most qualified bidders shall be returned within three days of the bid opening.

(5) - (7) (No change.)

(8) For contracts over $50,000, a district's board shall advertise the project once a week for two consecutive weeks. For contracts over $25,000 but not more than $50,000, a district's board shall solicit written competitive bids on the project from at least three bidders. For contracts not more than $25,000, a district's board is not required to advertise or seek competitive bids.

(9) A board of a special law district may elect to contract in accordance with the requirements in Texas Water Code, §49.273, even if those requirements conflict with provisions in the district's special law.

(10) A district with a population of more than 100,000 may utilize the design-build procedure for limited projects as provided in Local Government Code, Chapter 271, Subchapter J.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800948

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-0177

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SUBCHAPTER P. ACQUISITION OF ROAD POWERS BY MUNICIPAL UTILITY DISTRICT

30 TAC §293.201, §293.202

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code (TWC), §54.234, as amended by House Bill (HB) 3770, which provides that road powers may be obtained at the time of creation of a MUD in addition to the existing provision for obtaining road powers after creation, and to state the eligibility of roads that can be acquired, constructed, and financed by a MUD, and conveyed to a municipality, county, or state for operation and maintenance; and, TWC, §5.103 and §5.105, which provide the Texas Commission on Environmental Quality with the authority to adopt any sections necessary to carry out its powers and duties under the Texas Water Code and other laws of the state of Texas and to establish and approve all general policy of the commission.

The proposed amendments implement TWC, §54.234, as amended by HB 3770, and TWC, §5.103.

§293.201. District Acquisition of Road [~~Utility District~~] Powers.

(a) Texas Water Code (TWC), §54.234, authorizes a municipal utility district, or any petitioner seeking the creation of a municipal utility district, [~~with the power to levy taxes~~] to petition the commission to acquire road [~~the~~] powers for eligible roads under TWC, §54.234(b), which are conveyed to this state, a county, or municipality for operation and maintenance [~~granted under Texas Transportation Code, Chapter 441, to road utility districts~~].

(b) [~~A municipal utility district may petition the commission to acquire the road utility district powers authorized in TWC, §54.235.~~] This section and §293.202 of this title (relating to Application Requirements for Commission Approval) provide the requirements for petitioning the commission for road [~~utility district~~] powers.

§293.202. Application Requirements for Commission Approval.

(a) A conservation and reclamation district, operating under Texas Water Code (TWC), Chapter 54, [~~and which has the power to levy taxes,~~] may submit to the executive director of the commission an application for road [~~utility district~~] powers, which shall include the following documents:

(1) a petition or written request that will include a detailed narrative statement of the reasons for requesting road [~~utility district~~] powers and the reasons why such powers will be of benefit to the district and to the land that is included in the district, signed by the president of the board of directors of the district;

(2) a certified copy of the resolution of the governing board of the district authorizing the district to petition the commission for road [~~utility district~~] powers;

(3) a certification that the district is operating under TWC, Chapter 54, [~~and has the power to levy taxes,~~] with proper statutory references;

(4) evidence that the petition or written request to the commission requesting road [~~utility district~~] powers was filed with the city secretary or clerk of each city, in whose corporate limits or extraterritorial jurisdiction that any part of the district is located, concurrently with filing its application for such powers with the commission;

(5) a certified copy of the latest audit of the district performed under TWC, §§49.191 - 49.194;

(6) for districts that have not submitted an annual audit, a financial statement of the district, including a detailed itemization of all assets and liabilities showing all balances in effect not later than 30 days before the date that the district submits its request for approval with the executive director;

(7) [~~a certified copy of~~] preliminary plans for all the facilities to be constructed, acquired, or improved by the district[~~, which the district is required to submit to the governmental entity to which it proposes to convey district facilities by Texas Transportation Code, §441.013~~];

(8) a cost analysis and detailed cost estimate of the proposed road facilities to be constructed, acquired, or improved by the district [~~under road utility district powers~~] with a statement of the amount of bonds estimated to be necessary to finance the proposed construction, acquisition, and improvement;

(9) a narrative statement that will analyze the effect of the proposed facilities upon the district's financial condition and will demonstrate that the proposed construction, acquisition, and improvement is financially and economically feasible for the district;

(10) any other information that may be required by the executive director; and

(11) a filing fee in the amount of $100 plus the cost of the required notice.

(b) A petition for creation of a district submitted under §293.11(a) and (d) of this title (relating to Information Required to Accompany Applications for Creation of Districts) may also include a request for road powers, with information required under subsection (a)(4), and (7) - (9) of this section, to also be provided.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800949
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 30, 2008
For further information, please call: (512) 239-0177

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

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PART 2. TEXAS ETHICS COMMISSION

CHAPTER 34. REGULATION OF LOBBYISTS

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.11

The Texas Ethics Commission withdraws the proposed amendments to §34.11 which appeared in the November 9, 2007, issue of the *Texas Register* (32 TexReg 8069).

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800886
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: February 13, 2008
For further information, please call: (512) 463-5800

CHAPTER 45. CONFLICTS OF INTEREST

1 TAC §§45.1, 45.3, 45.5, 45.7, 45.9

The Texas Ethics Commission withdraws the proposed amendments to §§45.1, 45.3, 45.5, 45.7, 45.9 which appeared in the January 4, 2008, issue of the *Texas Register* (33 TexReg 14).

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800938
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: February 14, 2008
For further information, please call: (512) 463-5800

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER A. GENERAL GUIDELINES

1 TAC §55.4, §55.5

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §55.4 and §55.5, concerning the determination of cooperation for persons receiving public assistance, who are referred to the Office of the Attorney General for child support services and good cause for failure to cooperate. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9187) and will not be republished.

The purpose of the amended sections are to clarify procedures used by the Title IV-D agency in the determination of cooperation.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §231.002, which authorizes the Office of the Attorney General to adopt rules for the provision of child support services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800921
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: March 5, 2008
Proposal publication date: December 14, 2007
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER B. LOCATE-ONLY SERVICES

1 TAC §55.31, §55.32

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §55.31 and §55.32, concerning the application to the Title IV-D Agency for locate-only services. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9188) and will not be republished.

The purpose of the amendments is to clarify who may apply to the IV-D agency for locate-only services and parental kidnapping and child custody services.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §231.002, which provides the Office of the Attorney General with the authority to adopt rules for the provision of child support services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800922
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: March 5, 2008
Proposal publication date: December 14, 2007
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER C. ADMINISTRATIVE REVIEW

1 TAC §§55.101 - 55.105

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §§55.101 - 55.105, concerning administrative review of federal income tax refund intercept, criteria for reporting past-due child support to consumer credit reporting agencies, and contesting reporting to consumer credit reporting agencies. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9188) and will not be republished.

The purpose of the amendments is to clarify procedures for administrative review and criteria for reporting past due child support to consumer credit reporting agencies, update statutory references to Texas Civil Statutes, and include revisions to an attached graphic.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800923
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: March 5, 2008
Proposal publication date: December 14, 2007
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER D. FORMS FOR CHILD SUPPORT ENFORCEMENT

1 TAC §§55.111, 55.112, 55.115 - 55.119

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §§55.111, 55.112, and 55.115 - 55.119, regarding forms for child support enforcement. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9190) and will not be republished.

The purpose of the amendments is to provide forms authorized by state and federal statutes and used by the Office of the Attorney General, Child Support Division. The amendments also clarify the description of the forms and update statutory cites to the Texas Family Code.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §158.106, which authorizes the Office of the Attorney General to prescribe forms for the collection of child support.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800924
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: March 5, 2008
Proposal publication date: December 14, 2007
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.141

The Office of the Attorney General, Child Support Division, adopts an amendment to 1 TAC §55.141, concerning contesting distribution of collections on child support obligations. The amended section is adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9191) and will not be republished.

The purpose of the amended section is to clarify procedures regarding contesting distribution of collections on child support obligations, and update an attached form that is used when contesting the distribution of collections. The updated Request for Hearing form conforms to the Request for Hearing form currently used by the Office of the Attorney General.

No public comments were received regarding adoption of the amendments.

The amendment is adopted under Texas Family Code §231.002, which authorizes the State's Title IV-D agency to adopt rules for the provision of child support services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
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For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER G. AUTHORIZED COSTS AND FEES IN IV-D CASES

1 TAC §55.151, §55.152

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §55.151 and §55.152, concerning authorized costs and billing costs and fees in IV-D cases. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9192) and will not be republished.

The purpose of the amended sections is to clarify costs and fees that may be charged to the Office of the Attorney General by a clerk of the court, and update the name of a billing form provided by the Office of the Attorney General.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §231.002, which provides the Office of the Attorney General with the authority to adopt rules for the provision of child support services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. LICENSE SUSPENSION

1 TAC §55.203, §55.216

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §55.203 and §55.216, concerning forms used in the suspension of a license pursuant to Texas Family Code Chapter 232, and procedures used when a Petition to Suspend License is dismissed for want of prosecution. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9193) and will not be republished.

The purpose of the amended sections are to provide the Notice of Filing of Petition to Suspend License used by the Office of the Attorney General, and to clarify procedures regarding the dismissal of a Petition to Suspend License for want of prosecution.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code, §232.016, which provides the Office of the Attorney General with the authority to adopt rules for the implementation of Chapter 232, Texas Family Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. STATE DIRECTORY OF NEW HIRES

1 TAC §§55.301 - 55.308

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §§55.301 - 55.308, concerning the State Directory of New Hires. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9193) and will not be republished.

The purpose of the amended sections are to clarify procedures within the State Directory of New Hires and reflect the current names of the program and state agencies. Included in the amendment is the current State of Texas New Hire Reporting Form promulgated by the Office of the Attorney General.

No public comments were received concerning the adoption of the amendments.

The amendments are adopted under Texas Family Code §234.104, which provides the Office of the Attorney General with the authority to establish by rule procedures for reporting employee information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. VOLUNTARY PATERNITY ACKNOWLEDGMENT PROCESS

1 TAC §§55.401 - 55.407

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §§55.401 - 55.407, concerning the voluntary paternity acknowledgment process. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9195) and will not be republished.

The purpose of the amended sections is to clarify the voluntary paternity acknowledgment process and reflect the current name of the Texas Department of State Health Services, Vital Statistics Unit.

No public comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Family Code §160.314, which authorizes the Office of the Attorney General to adopt rules for the provision of Texas Family Code, Chapter 160, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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1 TAC §55.408

The Office of the Attorney General, Child Support Division, adopts new §55.408, concerning the Parent Survey on the Acknowledgment of Paternity. The new section is adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9197) and will not be republished.

The purpose of the adopted new section is to outline the procedures regarding the use of the Parent Survey in the voluntary paternity acknowledgment process.

No public comments were received regarding adoption of the new section.

The new section is adopted under Texas Family Code §160.314 which authorizes the Office of the Attorney General to adopt rules for the provision of Texas Family Code, Chapter 160, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. RELEASE OF INFORMATION

1 TAC §55.501

The Office of the Attorney General, Child Support Division, adopts an amendment to 1 TAC §55.501, concerning requests to the IV-D agency for information. The amended section is adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9197) and will not be republished.

The purpose of the adopted amendment is to clarify who may request information from the IV-D agency, and the type of information that may be released.

No public comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Family Code §231.003, which provides the Office of the Attorney General with the authority to prescribe forms and procedures for the implementation of Chapter 231.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stacey Napier
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SUBCHAPTER M. INTERCEPT OF INSURANCE CLAIMS

1 TAC §§55.601, 55.602, 55.604

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §§55.601, 55.602 and 55.604, concerning the intercept of insurance claims pursuant to Texas Family Code §231.015. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9198) and will not be republished.

The purpose of the adopted amendments is to clarify the procedures used by the IV-D agency regarding the intercept of certain liability insurance settlements or awards for claims in the satisfaction of arrearage amounts.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §231.015.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stacey Napier
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SUBCHAPTER N. NATIONAL MEDICAL SUPPORT NOTICE

1 TAC §§55.701, 55.703 - 55.705, 55.707

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §§55.701, 55.703 - 55.705, and 55.707, concerning the National Medical Support Notice. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9199) and will not be republished.

The purpose of the adopted amendments is to clarify the responsibilities of the IV-D agency and employer regarding the use of the National Medical Support Notice in the enforcement of health care coverage.

No public comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Family Code §154.186, which provides the Office of the Attorney General with the authority to prescribe forms and procedures consistent with federal law for use of the National Medical Support Notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
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SUBCHAPTER O. STATE DISBURSEMENT UNIT

1 TAC §55.804

The Office of the Attorney General, Child Support Division, adopts an amendment to 1 TAC §55.804, concerning the disbursement of child support payments to the obligee through the Texas Debit Card program. The amended section is adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9199) and will not be republished.

The purpose of the adopted amendment is to clarify how an obligee may opt out of the Texas Debit Card program.

No public comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Family Code §234.006, which authorizes the Office of the Attorney General to adopt rules in compliance with federal law for the operation of the state case registry and the state disbursement unit.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

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Stacey Napier
Deputy Attorney General
Office of the Attorney General
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For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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CHAPTER 66. FAMILY TRUST FUND DISBURSEMENT PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILTY

1 TAC §66.1, §66.3

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §66.1 and §66.3, concerning definitions and costs related to the Family Trust Fund. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9200) and will not be republished.

The purpose of the adopted amendments is to add an acronym to the definition section and update the amount of money that each county clerk remits to the comptroller for deposit to the Family Trust Fund upon collection of fees for each marriage license issued.

No public comments were received regarding the adoption of the amendments.

The adopted amendments are authorized under Texas Family Code, §2.014, which provides the Office of the Attorney General with the authority to adopt rules for the provision of funds for grants or contracts that support services that assist families.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800935
Stacey Napier
Deputy Attorney General
Office of the Attorney General
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For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §66.77, §66.99

The Office of the Attorney General, Child Support Division, adopts amendments to 1 TAC §66.77 and §66.99, concerning the administration of grants related to the Family Trust Fund. The amended sections are adopted without changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9201) and will not be republished.

The purpose of the adopted amendments is to update the time line in which a grantee must submit an invoice and the amount of time a grantee must properly obligate and expend funds to satisfy outstanding liabilities.

No public comments were received regarding adoption of the amendments.

The adopted amendments are authorized under Texas Family Code, §2.014, which provides the Office of the Attorney General with the authority to adopt rules for the provision of funds for grants or contracts that support services that assist families.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 14, 2008.

TRD-200800936
Stacey Napier
Deputy Attorney General
Office of the Attorney General
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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.1

The Department of Information Resources (department) adopts the amendment to 1 TAC §201.1, concerning definitions, to delete the definition for "project". The rule is adopted without changes to the proposed text as published in the November 2, 2007, issue of the *Texas Register* (32 TexReg 7787).

Paragraph (22) which is the definition of "project" is deleted. The remaining definitions are sequentially re-numbered.

No comments were received on the proposed amendment of the rule.

The amendment is adopted pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800960
Renée Mauzy
General Counsel
Department of Information Resources
Effective date: March 6, 2008
Proposal publication date: November 2, 2007
For further information, please call: (512) 475-4700

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.209

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §84.209, concerning Model Clauses for motor vehicle installment sales contracts.

The purpose of the amendments to 7 TAC §84.209 is to implement recent legislation enacted by the 80th Texas Legislature regarding fees for motor vehicle installment sales contracts. The changes implement House Bill 310 (HB 310) concerning a plate transfer fee and Senate Bill 11 (SB 11) concerning a compliance fee. The amendments to this rule are adopted with changes to the proposal published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9900).

House Bill 310 amends Texas Transportation Code, §502.453 by adding a $5.00 charge to the cost for transferring license plates and receiving new registration insignia. The agency believes that Texas Finance Code, Chapter 348 supports the inclusion of the plate transfer fee, at the dealer's option, as an itemized charge.

Thus, the purpose of the addition of §84.209(8)(C) concerning the plate transfer fee under Texas Transportation Code, §502.453, is to provide dealers with the option of charging under the itemization of amount financed a $5.00 fee for transferring license plates and receiving new registration insignia.

The commission received one written comment on the proposal from the Texas Automobile Dealers Association (TADA). The commenter wishes to clarify issues regarding the plate transfer fee language contained in §84.209(8)(C). The commenter states: "In order for there to be no misunderstanding by a buyer regarding this state mandated fee if a customer opts to transfer their license plates, TADA requests that the provision be titled '*Required Fee for Optional Plate Transfer*.' Additionally, the commenter also requests that the amendment state that the "creditor *will* charge a $5.00 fee" for the plate transfer (as opposed to

"may"), and that the fee be listed as "to *State* for *Plate Transfer Fee*" in the "Other Charges" section under the "Itemization of Amount Financed."

In reference to the commenter's recommended provision title, the commission agrees that the title as proposed needs clarification. The decision to transfer the plates is optional, yet if the consumer elects to proceed with a plate transfer, the fee must be paid. The commission believes that the use of the phrase "Required Fee" in the title would not properly implement the statutory provision, as the consumer must still opt to transfer the plates in order to trigger the fee requirement. Consequently, the commission believes that to achieve the best clarity, the title should be revised and adopted as follows: "Plate transfer fee." Also, the words "an optional" have been replaced with the article "a" before "$5.00 fee" for consistency.

Regarding the commenter's second suggestion, the commission agrees that if a license plate is transferred, the $5.00 fee is required by HB 310. The commission agrees that the creditor is authorized to charge the $5.00 plate transfer fee upon the consumer's decision to transfer plates and acknowledges the use of the word "will" in terms of the statutory requirement; however, the statute does not prohibit the creditor from absorbing the fee if it wishes. Thus, the commission believes that maintaining the use of the verb "may" in §84.209(8)(C) provides the necessary flexibility in the contract. Accordingly, the commission chooses to retain the verb "may" in lieu of the verb "will" as suggested by the commenter.

Concerning the commenter's final and third recommendation, the commission agrees that some clarification as to how the plate transfer fee may be listed would be useful to licensees. As a result, the commission has added the following statement to §84.209(8)(C), providing suggested language: "The creditor may document the plate transfer fee in the Other Charges section with the following language: 'to State for Plate Transfer Fee.' "

Senate Bill 11, among other things, amends Texas Transportation Code, §503.0631(f) by allowing a motor vehicle dealer to charge a fee designed to compensate the dealer for complying with the temporary tag database. The compliance fee added by SB 11 does not fall under any category of the exclusive list contained in Texas Finance Code, §348.005 of the only allowable itemized charges that a dealer can include in a retail installment sales contract. Under Texas Finance Code, §348.005(1), the compliance fee is not a fee "for registration, certificate of title, [or] license," and is not an "additional registration fee [] charged by a full service deputy. . . ." The compliance fee is not a tax under Texas Finance Code, §348.005(2). Under Texas Finance Code, §348.005(4), the compliance fee is also not a "charge [] authorized for insurance, service contracts, or warranties by Subchapter C." Texas Finance Code, §348.005(3) allows only for "fees or charges prescribed by law and connected with the sale or inspection of the motor vehicle . . . ." Texas courts have distinguished between "prescribed" and "permitted," holding that "prescribed" is a much more restrictive term indicating mandatory legal standards. *Jones v. Killingsworth*, 403 S.W.2d 325 (Tex. 1965). As the compliance fee is a fee that the dealer "may charge" according to SB 11, it is permissive and not required by the state for the sale or inspection of a motor vehicle. Therefore, the commission believes that the permissive compliance fee is not authorized in a retail installment sales contract subject to Texas Finance Code, Chapter 348 as an itemized charge under §348.005.

Consequently, the purpose of the addition of §84.209(8)(D) concerning the compliance fee under Texas Transportation Code, §503.0631(f), is to clearly state that the creditor is prohibited from assessing an itemized charge under the itemization of amount financed for costs associated with complying with the temporary tag database.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

§84.209. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) Identification of parties. This information identifies the parties to the contract.

(A) The model identification clause lists the name and address of the creditor, the date of the contract, and the name and address of the buyer. At the creditor's option, a creditor may include an account number or contract number. The model clause reads:
Figure: 7 TAC §84.209(1)(A) (No change.)

(B) The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your."

(2) Assignment of contract. The model clause regarding assignment of contract reads: "This contract may be transferred by the Seller."

(3) Buyer's affirmation and promise to pay. The model clause regarding buyer's affirmation and promise to pay reads: "The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not."

(4) Inspection acknowledgment. The model clause regarding inspection acknowledgment reads: "I have thoroughly inspected, accepted, and approved the motor vehicle in all respects."

(5) Identification of motor vehicle. The motor vehicle identification information provision should contain the following information about the motor vehicle: the seller's stock number; the manufacturer's year model; the manufacturer's make; the manufacturer's model type or number; the vehicle identification number; the license plate number (if applicable); a new/used designation; and the primary purpose designation. The seller's stock number and the license number are both optional; the omission will not make a contract non-standard. The motor vehicle identification information provision may include additional information about the vehicle including, odometer reading, color, the designation as a heavy commercial vehicle, and key code. If the creditor includes this additional information about the motor vehicle, the change will not make the provision a non-standard provision. The model clause regarding identification of the motor vehicle reads:

Figure: 7 TAC §84.209(5) (No change.)

(6) Trade-in vehicle description. The model clause regarding trade-in vehicle description reads:
Figure: 7 TAC §84.209(6) (No change.)

(7) Truth in Lending Act disclosure. The model clause regarding Truth in Lending Act disclosure reads:
Figure: 7 TAC §84.209(7) (No change.)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:
Figure: 7 TAC §84.209(8)(A) (No change.)

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:
Figure: 7 TAC §84.209(8)(B) (No change.)

(C) Plate transfer fee. Under Texas Transportation Code, §502.453, the creditor may charge under the itemization of amount financed a $5.00 fee for transferring license plates and receiving new registration insignia. The creditor may document the plate transfer fee in the Other Charges section with the following language: "to State for Plate Transfer Fee."

(D) Compliance fee prohibited. Under Texas Transportation Code, §503.0631(f), the creditor is prohibited from assessing an itemized charge under the itemization of amount financed for costs associated with complying with the temporary tag database.

(9) Documentary fee.

(A) The following notice satisfies the requirements of Texas Finance Code, §348.006 if printed in a size equal to at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."

(B) The following notice is a sufficient Spanish translation of the documentary fee disclosure required by Texas Finance Code, §348.006. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of $50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read: "Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comprador como gastos de manejo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder $50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación es requerida por la ley." Or "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero èste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de $50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación se exige por ley."

(10) Deferred downpayments. The creditor has considerable flexibility in disclosing the deferred downpayments. The model provision discloses the deferred downpayments by placing the information, the due date and dollar amount of the deferred downpayments, in several boxes. If a creditor uses this model provision, the creditor would enter the due date and dollar amount of each deferred downpayment in the appropriate boxes. As an alternative to this model provision, a creditor may disclose the deferred downpayments in the Payment Schedule of the Amount Financed in the federal disclosure box. If a creditor elects this option, the due date and the dollar amount of the deferred downpayment must be shown. If the total amount of the deferred downpayment is not satisfied by the date of the second regularly scheduled installment, the deferred downpayment must be included in the Payment Schedule. As another alternative, the creditor may disclose the deferred downpayment amount in the Payment Schedule. The model clause regarding deferred downpayments reads:
Figure: 7 TAC §84.209(10) (No change.)

(11) Required physical damage insurance. The creditor may chose to omit the statement of the retail buyer's right to obtain substitute coverage from another source. The model clause regarding required physical damage insurance reads:
Figure: 7 TAC §84.209(11) (No change.)

(12) Optional insurance coverages. The model clause regarding optional insurance coverages reads:
Figure: 7 TAC §84.209(12) (No change.)

(13) Optional credit life and accident and health insurance. The model clause regarding optional credit life and accident and health insurance reads:
Figure: 7 TAC §84.209(13) (No change.)

(14) Liability insurance. If liability insurance coverage is not included in the contract, any of the following notices are sufficient to satisfy the requirements of Texas Finance Code, §348.205 if printed in a size equal to at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous:

(A) "THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(B) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT."

(C) "UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS."

(15) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Texas Finance Code, Chapter 349, Subchapter C. The model clause regarding prohibition against oral modifications reads: Figure: 7 TAC §84.209(15) (No change.)

(16) Finance charge earnings methods:

(A) Regular transaction using sum of the periodic balances method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) "You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract." Or

(II) "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

(ii) Deferred sales tax. The model clause regarding deferred sales tax reads: "The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00."

(B) True daily earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) "You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges." Or

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax: If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(C) Scheduled installment earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) "You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges." Or

(II) If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is not deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges."

(ii) Deferred sales tax. If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure should read: "The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges."

(17) Consumer warning. The following notices satisfy the requirements of Texas Finance Code §348.102(d) if printed in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous.

(A) For contracts using the sum of the periodic balances method (Rule of 78s) or the scheduled installment earnings method, the notice may read:

(i) "NOTICE TO THE BUYER--I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS." Or

(ii) "NOTICE TO THE BUYER--THE BUYER SHOULD NOT SIGN THIS CONTRACT BEFORE READING IT OR IF IT CONTAINS ANY BLANK SPACES. THE BUYER IS ENTITLED TO A COPY OF THE SIGNED CONTRACT. UNDER THE LAW, THE BUYER HAS THE RIGHT TO PAY OFF IN ADVANCE

ALL THAT THE BUYER OWES AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. THE BUYER SHOULD KEEP THIS CONTRACT TO PROTECT ITS LEGAL RIGHTS."

(B) For contracts using the true daily earnings method, the notice may read: "NOTICE TO THE BUYER--I WILL NOT SIGN THIS CONTRACT BEFORE I READ IT OR IF IT CONTAINS ANY BLANK SPACES. I AM ENTITLED TO A COPY OF THE CONTRACT I SIGN. UNDER THE LAW, I HAVE THE RIGHT TO PAY OFF IN ADVANCE ALL THAT I OWE AND UNDER CERTAIN CONDITIONS MAY SAVE A PORTION OF THE FINANCE CHARGE. I WILL KEEP THIS CONTRACT TO PROTECT MY LEGAL RIGHTS."

(18) Buyer's acknowledgment of contract receipt.

(A) The following acknowledgments conform to the requirements of Texas Finance Code, §348.112 if they appear directly above the place for the buyer's signature in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. A creditor may choose the most appropriate option:

(i) If the buyer's signature is dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. A reasonable period of time would ordinarily be three days, excluding Sundays and holidays. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(ii) If the buyer's signature is not dated. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)."

(iii) If the buyer's signature is not dated. If this clause is chosen, the copy must be mailed within a reasonable period of time. The model acknowledgment may read: "I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME."

(iv) If the buyer's signature is not dated but the contract contains the date of the transaction. The model acknowledgment may read: "I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT."

(B) Acceptance of contract receipt. The model clause regarding acceptance of contract receipt reads:
Figure: 7 TAC §84.209(18)(B) (No change.)

(19) Consumer Credit Commissioner notice. The following notice satisfies the requirements of Texas Finance Code, §14.104 and §1.901 of this title (relating to Consumer Notifications). The telephone number of the retail seller, creditor, or holder may be printed in conjunction with the name and address of the retail seller, creditor, or holder elsewhere on the contract or agreement provided the notice required by Texas Finance Code, §14.104 is amended to direct the reader's attention to the area of the contract where the telephone number may be found. The consumer credit commissioner notice reads: "To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 N. Lamar Blvd., Austin, Texas 78705-4207; (800) 538-1579; www.occc.state.tx.us, and can be contacted relative to any inquiries or complaints."

(20) Finance charge refund method. If a contract uses the finance charge refunding method of the sum of the periodic balances or the scheduled installment earnings method, the finance charge refund provision reads: "If I prepay in full, I may be entitled to a refund of part of the Finance Charge." On contracts using the true daily earnings method, this finance charge refund provision should not be disclosed because it is not applicable.

(A) Contracts using the sum of the periodic balances method.

(i) Name of method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule."

(ii) Optional description of method. The creditor may include the following additional description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00."

(iii) Optional description of method for use in contracts for heavy commercial vehicles. At the creditor's option, a contract for a heavy commercial vehicle, as defined in the Texas Finance Code, may include the following description of the method. The model clause reads: "You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00."

(B) Contracts using the scheduled installment earnings method.

(i) Name of method. The model clause to identify the method of refunding finance charge reads: "You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule."

(ii) Optional description of method. The creditor may include the following additional description of the method: "You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00."

(C) Flexible contract forms designed to accommodate alternative methods. Creditors may use a flexible contract form with alternative earnings methods, so long as the method used on a particular contract is permissible for that contract. The following clause illustrates one way that this flexibility may be accomplished: "You will figure the Finance Charge refund using the sum of the periodic balances

method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00."

(21) Application of payments. In this provision, the term "finance charge" should not be construed to have the same meaning as Finance Charge as defined by the Truth in Lending Act. A default or late charge is considered to be a finance charge under Texas law; therefore, a default or late charge can be charged and collected as part of the earned finance charge. At the creditor's option the creditor may modify the application of payments language by adding "and late charges" following the phrase "earned but unpaid finance charge." The model clause reads:
Figure: 7 TAC §84.209(21) (No change.)

(22) Effect of early and late payments. For contracts using the true daily earnings method, the model clause reads: "You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase."

(23) Interest on matured amount. The model provision for interest on any matured amount at any rate permitted by law reads: "If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due." In this provision, the maximum rate allowed by law refers to the rate found in Texas Finance Code, Chapter 303.

(24) Balloon payments. If the contract has a balloon payment, the creditor must include a provision in the contract that allows the buyer to refinance the balloon payment over time. The provision must comply with Texas Finance Code, §348.123. The model provision for defining the balloon payment reads: "A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment."

(A) Paying the balloon payment. If a retail installment contract contains a balloon payment that is the final payment, the contract must also provide the right for the retail buyer to pay the balloon payment. The model provision for paying the amount of the final scheduled balloon payment reads: "I can pay all I owe when the balloon payment is due and keep my motor vehicle."

(B) Balloon payment alternatives. If the retail installment contract contains the right for a retail buyer to refinance a balloon installment, the contract provision to refinance the installment must comply with either clause (i) or (ii) of this subparagraph. A contract under clause (ii) of this subparagraph must also contain the right of the retail buyer to sell the motor vehicle back to the holder or the retail seller.

(i) The model clause to describe a buyer's right to refinance a balloon installment under Texas Finance Code, §348.123(a), when applicable reads: "If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income."

(ii) If the contract contains a balloon payment and the seller intends Texas Finance Code, §348.123(b)(5) to apply to the contract:

(I) Special right to refinance balloon payment under Texas Finance Code, §348.123(b)(5)(B)(iii). The model clause reads: "I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule."

(II) Repurchase option. If the contract includes a balloon payment, the creditor must draft a provision addressing the repurchase option.

(25) Agreement to keep motor vehicle insured. The model clause regarding agreement to keep the motor vehicle insured reads: "I agree to have physical damage insurance covering loss or damage to the motor vehicle for the term of this contract. The insurance must cover your interest in the vehicle." The creditor may include the following optional provision: "The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage."

(26) Creditor's right to purchase required insurance if buyer fails to keep motor vehicle insured. The model clause regarding agreement to allow the creditor to purchase required insurance if the buyer fails to keep the motor vehicle insured reads: "If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file."

(27) Physical damage insurance proceeds. The model clause regarding physical damage insurance proceeds reads: "I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me."

(28) Returned insurance premiums and service contract charges. The contract may authorize a creditor to apply charges returned to the creditor for canceled insurance, service contract, and extended warranty charges to the buyer's obligation under the agreement as permitted by law, regardless of whether or not the buyer is in default under the contract.

(A) The model clause for contracts using the true daily earnings method reads: "If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(B) For contracts using the scheduled installment earnings or sum of the periodic balances methods, the creditor may substitute the following clause: "If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me."

(29) Application of credits. The model clause regarding application of credits reads: "Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments."

(30) Transfer of rights. The seller does not have a duty to disclose the terms on which a contract or a balance under a contract is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired as provided by Texas Finance Code, §348.301. The model clause regarding transfer of rights reads: "You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies."

(31) Grant of security interest in collateral. The model clause regarding a description of a security interest granted in a typical motor vehicle installment sale reads:
Figure: 7 TAC §84.209(31) (No change.)

(32) Agreements regarding use and transfer of motor vehicle. The contract may contain a provision prohibiting a buyer from transferring any interest in the motor vehicle without the creditor's written permission, requiring the buyer to notify the seller of change of address, or prohibiting the removal of the motor vehicle from Texas. The transfer fee limitation establishes the maximum fee that a creditor could contract for, charge, or collect for transferring the buyer's equity in the motor vehicle to another party. If desired, a creditor may amend the model provision to reflect a lower transfer fee amount. The model clause concerning agreements regarding the use and transfer of the motor vehicle reads: "I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission."

(33) Care of motor vehicle. The contract may obligate the buyer to keep the motor vehicle free of liens and encumbrances, require the buyer to keep the motor vehicle in good working order and repair, or prohibit the buyer from allowing the motor vehicle to be exposed to seizure, confiscation, or other involuntary transfer. The model clause regarding care of the motor vehicle reads: "I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy, or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount."

(34) Default rights and repossession provisions. This paragraph details agreements allowing acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Texas Business and Commerce Code, §1.309. The following provisions are samples of model clauses regarding some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(A) Acceleration and default. The model clause regarding acceleration and default reads:
Figure: 7 TAC §84.209(34)(A) (No change.)

(B) Late charge. The model clause regarding late charge reads: "I will pay you a late charge as agreed to in this contract when it accrues."

(C) Repossession. At the creditor's option, a creditor may choose one of the following model provisions pertaining to repossession. The model clauses regarding repossession read:

(i) "If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle." In this provision, the term "peacefully" is intended to have the same meaning as "without breaching the peace," as determined by the Texas courts, and as found under clause (ii) of this subparagraph. Or

(ii) "If I default, you may repossess the motor vehicle from me if you do so without breaching the peace. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle."

(D) Buyer's right to redeem. The model clause regarding buyer's right to redeem reads: "If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract."

(E) Disposition of motor vehicle. The model clause regarding disposition of the motor vehicle reads: "If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of

title and any other document required by state law to record transfer of title."

(F) Collection costs. The model clause regarding collection costs reads: "If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows."

(G) Cancellation of optional insurance or service contracts. The model clause regarding cancellation of optional insurance or service contracts reads: "This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

(35) Acceleration, waiver of notice of intent to accelerate, and notice of acceleration. A model clause regarding the holder's right to accelerate maturity of the contract and to waive the buyer's or co-buyer's common law right to notice of intent to accelerate, notice of acceleration, or both reads: "If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe."

(36) Refund upon acceleration. For contracts using the sum of the periodic balances or scheduled installment earnings methods, the model clause regarding the buyer's right to a finance charge refund upon acceleration of the contract reads: "If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full."

(37) Integration and severability.

(A) The contract may include an integration clause indicating that the parties to the contract intend it to be the final written expression of their agreement. The model clause regarding integration reads: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle."

(B) The contract may also include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The model clause regarding severability reads: "If any part of this contract is not valid, all other parts stay valid."

(38) No waiver and limitations on creditor's rights and usury savings.

(A) A model clause to prevent a creditor's delay in enforcing rights under the contract from affecting a waiver of those rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(B) A provision establishing limitations on the creditor's rights reads: "You will exercise all of your rights in a lawful way."

(C) The model clause regarding usury savings reads: "I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts."

(39) Applicable law. A model clause to establish the law that will apply to the contract reads: "Federal law and Texas law apply to this contract."

(40) Warranty disclaimer. The disclaimer of express and implied warranties should be set out from the surrounding text so that the disclosure is conspicuous. A disclaimer of express and implied warranties, such as the following, is permitted by Texas Business and Commerce Code, Article 2, Subchapter C, and reads: "Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide."

(41) Preservation of consumer's claims and defenses notice. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in all capitals, boldfaced and in at least 10-point type. The preservation of consumer's claims and defenses notice disclosure, as required by the Federal Trade Commission's preservation of consumer's claims and defenses notice, 16 C.F.R. §§433.1 *et seq.*, reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(42) Used car buyer's guide. The used car buyer's guide disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide disclosure, as required by the Federal Trade Commission's Used Car Regulation, 16 C.F.R. §§455.1 *et seq.*, reads:

(A) "Used Car Buyer's Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

(B) Spanish Translation: "Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta."

(43) Negotiability and assignment. The disclosure of the negotiability of the contract should be placed on the front side of the contract and may read:

(A) "The Annual Percentage Rate may be negotiated with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge";

(B) "The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance"; or

(C) "A customer may obtain their own financing. The finance charge may be negotiable. The dealership may assign the retail installment contract. There is no duty to disclose the terms for the sale of this contract (e.g., price paid to retail seller to purchase retail installment contract)."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: December 28, 2007
For further information, please call: (512) 936-7640

♦ ♦ ♦

CHAPTER 89. PROPERTY TAX LENDERS
SUBCHAPTER F. COSTS AND FEES

7 TAC §89.602, §89.603

The Finance Commission of Texas (commission) adopts new 7 TAC, §89.602, concerning Fee for Filing Release, and §89.603, concerning Fee for Payoff Statement or for Information on Current Balance Owed, regarding property tax lenders. The agency plans to consider a proposed rule regarding attorney's fees for a future meeting of the commission. Section 89.602 is adopted with changes and §89.603 is adopted without changes to the proposal published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9901).

As a note of background regarding these rules, the property tax lender industry is a fairly young industry (approximately 10-12 years old) and an industry newly regulated by the agency. The agency decided that it would be in the best interest of consumers as well as the industry to gather information from interested stakeholders in order to prepare an informed and well-balanced proposal for the commission on the issue of fees. Accordingly, the agency distributed an Advance Notice of Proposed Rulemaking (ANPR) and received written comments from several interested stakeholders. Subsequently, the agency held a stakeholders meeting where several stakeholders provided verbal testimony and elaborated on their written comments to the ANPR.

Upon review of all the thorough and insightful commentary provided, the agency also distributed a proposed rule draft to the growing list of stakeholders for specific early or pre-comment prior to the presentation of the rules to the commission. The agency carefully evaluated the stakeholders' comments and has incorporated numerous recommendations offered by the stakeholders. The agency believes that this early participation of stakeholders in the rulemaking process has greatly benefited the resulting adoption.

The commission received one written comment on the proposal from the Texas Property Tax Lenders Association (TPTLA). The comment is generally unfavorable and requests that the allowable fees contained in both rules be increased. The specific comments regarding each rule are addressed following the individual purpose of the provision at issue.

In general, the purpose of the new rules is to establish for property tax lenders post-closing fees as required under Senate Bill 1520 (SB 1520), as enacted by the 80th Texas Legislature. The individual purposes of each rule are provided in the following paragraphs.

Section 89.602 provides the fees that may be charged by a property tax lender when filing a release of lien. Subsection (a) outlines the allowable fee components, which include the actual costs charged by the county clerk for filing the release, the actual costs of an outside attorney for preparing the release, and an administrative fee not to exceed $35 for services related to filing provided by the property tax lender.

With regard to §89.602(a)(3), the commenter requests that the administrative fee be increased to $65 in order to cover the property tax lender's costs of delivering documents to the county clerk and "to each tax office that assesses the property-as many as three tax offices per property. Copies typically are sent by either certified mail or courier, so that the transferees can track the deliveries." The commenter believes that the proposed "amount is insufficient, as it will not cover the actual costs of complying with the statute."

While the commission recognizes that the proposed amount of $25 was not adequate to cover multiple, tracked mailings, the commission believes that an increase of $10 should be more than adequate, encompassing two certified letters. The commenter mentions delivery by "courier" and the agency is aware that some property tax lenders also use commercial overnight delivery services. The commission, however, believes that utilizing U.S. certified mail is a less expensive and equally reliable method to deliver the release documents. Moreover, the agency is aware of further cost savings available to property tax lenders who use certified mail: software programs that print return receipts ("green cards") and electronic return receipts costing less than the cards. Property tax lenders may elect to use more expensive delivery methods if they wish, but the allowable administrative fee is intended to cover the necessary and most economical delivery options. Therefore, the commission agrees to increase the allowable administrative fee to $35, as opposed to the higher amount suggested by the commenter.

Subsection (b) of §89.602 states that the administrative fee contained in §89.602(a)(3) may be limited by other law, in order to provide notice to property tax lenders that this fee should be reviewed in conjunction with other state or federal laws applicable to the particular transaction.

Section 89.602(c) provides for a maximum aggregate fee of $110 that may be charged by a property tax lender for filing a release. The agency believes that this maximum fee can accommodate the filing fees of Texas county clerks (e.g., fees for filing a release in Travis or Williamson county range from $16 to $21), a reasonable attorney's fee for preparing a simple release form, and up to $35 for the mailing, delivery, and other related filing costs of the property tax lender.

Regarding §89.602(c), the commenter requests that the maximum aggregate fee be increased to $125. The commenter expresses the concern that after subtracting the typical costs involved in filing a release and delivering the copies, the proposed maximum fee is then insufficient to cover outside attorney's fees and administrative costs. As with the administrative fee, the commission acknowledges that the proposed aggregate fee of $75 should be increased, in part to account for the $10 increase already added to the administrative fee. In order to account for further out-of-pocket attorney's fees, the commission has decided that an additional increase of $25 to the maximum fee is warranted.

The commission believes that the resulting $110 maximum aggregate fee (proposed $75 + 10 + 25 = $110) will serve to provide property tax lenders with a "reasonable fee" for filing release of liens, as required by SB 1520. The commission has increased

the allowance for out-of-pocket attorney's fees and increased the administrative fee in acknowledgment of the necessary communication costs required by the statute. The commenter contends that the rule as proposed would require the industry to lose money in order to comply with the requirements related to releasing liens for property tax loans. The contemplated increases will assure that the industry will not have to suffer losses in order to comply with the legal requirements to file release of liens. Thus, the commission agrees to increase the allowable maximum aggregate fee to $110, as opposed to the higher amount suggested by the commenter.

Section 89.603 describes the fees that a property tax lender may charge in conjunction with providing a payoff statement or information regarding the current balance owed by the property owner. The statutory prohibition on charging a fee for the initial payoff statement is echoed in subsection (a).

In §89.603(b), a $10 fee is prescribed for each additional payoff statement provided by a property tax lender after an initial payoff statement has been provided. The $10 amount is modeled after the payoff statement directive issued by the Department of Housing and Urban Development (*Housing and Urban Development Handbook* 4330.1 REV-5, Ch. 4, Directive No.: 4330.1, "Administration of Insured Home Loans").

Concerning §89.603(b), the commenter states: "The TPTLA requests that the Commission consider a graduated fee scale for parties requesting payoff statements or information on current balances owed." After the initial free payoff statement (charge prohibited by statute), the TPTLA recommends a graduated scale as follows: $10.00 for the second payoff statement, $25.00 for the third, and "$50.00 for each payoff statement provided thereafter. This graduated scale would encourage communication amongst those parties seeking the information and compensate the property tax lender for the resources they must expend to comply with the multiple requests."

The commission acknowledges that some requests for a payoff statement are abusive. The statute provides for a "reasonable fee" to be paid to property tax lenders for providing additional payoff statements. The statute does not provide that property tax lenders be paid an unreasonable fee if the number of payoff statement requests is excessive. The commission believes that the analysis must be focused on the reasonableness of the fee in relation to the cost involved in providing the information. Accordingly, the commission declines to adopt a graduated scale for fees to provide additional payoff statements and maintains that the fee as proposed is reasonable under SB 1520.

Additionally, the commission disagrees with the commenter's analysis of the effect of the two regulations on small businesses. Initially, the commenter does not provide any analysis of how or why the fee amount proposed for providing additional payoff statements is damaging to small businesses. The commenter has merely placed statements before the commission that suggest a small business would be adversely affected. Simply stating that more money could be collected by charging the commenter's recommended fee is not sufficient to show an adverse effect on small businesses. Secondly, the commenter does not present any support for the economic information upon which the commenter bases its contentions. Finally, the increased fees associated with filing the release of liens serve to eliminate any potential negative effect on small businesses claimed by the commenter. Therefore, the commission maintains that the rules as adopted will have no adverse economic effect on small businesses.

These new sections are adopted under Texas Tax Code, §32.06(a-4), which authorizes the Finance Commission to adopt rules to establish reasonable fees for property tax lenders.

The statutory provisions affected by the adopted new sections are contained in Texas Tax Code, §32.06 and §32.065, and Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.602. Fee for Filing Release.

(a) Allowable fee components. Under Texas Tax Code, §32.06(b), a property tax lender may charge a property owner the following for filing the release:

(1) the actual cost charged by the county clerk for filing the release;

(2) the actual cost of attorney's fees paid to an outside attorney who is not an employee of the property tax lender for preparing the release; and

(3) an administrative fee not to exceed $35 for services related to filing provided by the property tax lender (e.g., costs to mail or deliver release to county clerk or taxing unit(s)).

(b) Potential limitations on administrative fee. The administrative fee provided by subsection (a)(3) of this section may be limited by other law.

(c) Maximum aggregate fee. The maximum aggregate fee for all of the items provided in subsection (a) of this section shall not exceed $110.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800962
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 6, 2008
Proposal publication date: December 28, 2007
For further information, please call: (512) 936-7640

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 300. ADMINISTRATION

10 TAC §300.10

The Texas Residential Construction Commission ("commission") adopts 10 TAC §300.10 concerning definitions. The new rule is adopted by the commission with changes to the text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 20).

The agency adopts this section as part of a consolidation of rules and review of 10 TAC Chapters 300, 301, and 302 undertaken pursuant to requirements of Government Code, §2001.039. The

commission adopts these definitions to assist those who use the commission's rules by providing terminology that will enable users to better understand and use the rules and navigate that agency's enabling Act. The newly proposed section includes language that was previously adopted in §301.1 of this title and adds new language to implement new legislation enacted during the 80th Legislative Session, Regular Session, House Bill 1038 (Act effective Sept. 1, 2007, 80th Leg., Regular Session), which modifies Title 16, Property Code.

The commission received two sets of comments on the proposed adoption. Robert L. Seibert submitted comments on behalf of his client, The Home Depot, U.S.A., Inc. (Home Depot) and Ned Munoz submitted comments on behalf of the Texas Association of Builders (TAB).

Home Depot's first comment was directed to the proposed definition 10 TAC §300.10(17). Home Depot states that the proposed rule talks about coordination of trades or multiple subcontractors, and it questions the purpose of that language. Home Depot notes that definition as proposed is not the verbatim text of the statutory definition. Home Depot expresses the potential for confusion if a single trade is involved in a transaction with homeowner in excess of $10,000. Home Depot also asks for clarification on the meaning of the term "structural components" and the phrase "penetration of the home's diaphragm."

When the Texas Legislature created the commission through its enactment of House Bill 730, an Act of the 78th Legislature, it used the phrases "material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home" and "an improvement to the interior of an existing home when the cost of the work exceeds $20,000" to define the individuals and business entities that were required to register as "builders" with the commission. Property Code, §401.003 (Vernon Supp. 2003). The term "builder" and the individuals and entities included within that definition are critical to the entire statutory scheme created by House Bill 730, which included amendments to Property Code, Chapter 27, also known as the Residential Construction Liability Act or "RCLA."

Interpreting House Bill 730, the commission adopted 10 TAC §301.1 (15) "improvement to the interior of an existing home when the cost of the work exceeds $20,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of $20,000 to be paid by a homeowner to a single builder" and 10 TAC §301.1(18): "material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts."

These definitions were adopted to clarify the commission's interpretation that the legislature did not intend for the term "builder" to capture construction professionals entering home improvement contracts directly with a homeowner to perform a single repair or replacement of a home's component. The economic reality is that carpet replacement or interior painting alone could exceed the statutory threshold of $20,000--the threshold that was enacted in House Bill 730. Furthermore, the commission's interpretation derives in part from RCLA, which provides a separate avenue for resolving disputes between homeowners and contractors who undertake repairs or alterations to an existing home.

The statutory definitions of "material improvement" and "improvement to the interior of an existing home" adopted by House Bill 1038, an Act of the 80th Legislature are statutory enactments of commission rules almost verbatim. The legislature is presumed to enact a statute with "complete knowledge of existing law and with reference to it." *Upjohn Co. v. Rylander*, 38 S.W.3d 600 at 608, (Tex.App. - Austin, 2000.) Accordingly, it is presumed that the legislature had complete knowledge of the commission's adoption and use of those terms, when it enacted the definitions. In addition, the legislature further clarified the commission's definition for improvement to the interior of an existing home by adding a phrase from the commission's definition of "material improvement," to wit: "An improvement to the interior of an existing home does not include improvements to an existing home *if the improvements are designed primarily to repair or replace the home's component parts*." (emphasis added).

House Bill 1038 lowered the monetary threshold for interior improvements to existing homes to $10,000--a figure that encompasses a larger number of projects, such as carpet replacement and interior painting--which would have required an even greater number of tradesmen to have to register as builders or remodelers with the commission, were it not for the limitation of "repair or replacement of a home's component parts." Prior to publication of the proposed rule, the commission held a public hearing in which the definitions of "improvement to the interior of an existing home" and "material improvement" were discussed at length.

Based on the origin of the substance of these definitions and the legislature's adoption of them into statute, the commission again finds that the legislature did not intend to capture within the definition of "builder" every tradesman who enters into a contract with a homeowner for an interior renovation in excess of $10,000 and that, by adopting the commission's definition of "material improvement to an existing home," the legislature knowingly accepted the commission's interpretation of the statute. The commission also interprets the statute to intend to capture within Title 16, Property Code, those improvement contracts to an existing home between a homeowner and a builder or remodeler who subcontracts with one or more tradesmen, thus creating a situation in which the homeowner no longer has privity of contract with all the tradesmen performing work in or on the home, in order to hold those builders and remodelers responsible to the homeowner for work performed by the tradesman selected by the builder or remodeler.

To address Home Depot's confusion, the definition of improvement to the interior of an existing home clearly identifies the parties as a single builder or remodeler, who has received a payment from a homeowner in excess of $10,000 and who uses more than one subcontractor or tradesman. A single tradesman or contractor who enters into a home improvement contract with a homeowner to repair or replace a single component is not within the definition.

Home Depot's next comment addresses the language "work involves the structural components or the penetration of the home's diaphragm." Home Depot questions why this term is included in the definition because it asserts the language adds vagueness to the statutory definition. The commission disagrees with the comment. The purpose of this comment is to address improvements affecting the load-bearing structure of the home. The term "structural components" is used in the

commission rules on warranties and performance standards applicable to homes covered by Title 16, Property Code, in 10 TAC Chapter 304. The same term is used in the definition of "structural failure," which is also a term defined in this rulemaking action, but upon which Home Depot made no comment. If a repair or replacement of a component part affects a structural component of the home or requires a penetration into the walls, ceiling, or structural flooring--the diaphragm--of a home, the commission finds that the action has gone beyond repair or replacement of a single component part. The commission asserts that the language proposed for adoption clarifies that position and avoids vagueness.

Home Depot next comments that the definition of interior improvement does not utilize the word "repair" in its example of replacement of a single component with another. The commission finds that the term repair is one with plain meaning--to restore the functionality. The commission does not believe that the example must cover every possibility in order to add clarity to the statute; therefore, the commission has not modified the definition as suggested.

Home Depot asserts that use of "single component part" in the definition substantively revises the statutory definition, which uses the language "component parts." As explained above, the commission interprets the statute to exclude contracts between homeowners and a single tradesman or contractor for the repair or replacement of a single component that also does not affect the structural components of the home.

Home Depot also proposes that the commission define the term "home's component parts," which is used in the statute. The commission finds that the word "component" has a common meaning not requiring special elucidation; therefore, it declines to adopt a definition for "home's component parts."

Home Depot's comments question the second sentence in 10 TAC §300.10(20): "A material improvement includes modifications to an existing home that requires the addition of new structural components or the modification of the home's existing structural components" stating that the meaning is not clear. The commission finds that the proposed rule addresses situations in which a modification to an existing home goes beyond the mere repair or replacement of the home but in fact alters an existing structural component or adds a new one, such as the case of replacing a roof and in the process adding dormer windows, which clearly goes beyond repair or replacement of the roof. Similarly, with the definition of an interior improvement to an existing home, if a repair or replacement requires a builder to alter or add a load-bearing wall, the project has moved beyond the repair or replacement of a component and added or modified a structural one, which the commission believes is a type of improvement project to an existing structure that the legislature intended to be subject to Title 16, Property Code, dispute resolution procedures.

Home Depot also questions the language used in proposed 10 TAC §300.10(27) because the statute uses the language "is occupied" when discussing substantial completion. The commission's proposed rule used the language "can be occupied." "Substantial completion" is a term commonly used among legal professionals and construction industry experts to describe the point in time when the material terms of the contract are complete, even though there may be non-material work unfinished, such as is the case of "punch list" repair items. At the point of "substantial completion," a project can be used for its intended purposes, including occupation; however, it is not dependent upon a party actually occupying the space. The term is so common in the industry, that Title 16, Property Code, does not define the term "substantial completion" as suggested by Home Depot's comment. Moreover, in Property Code, §426.003, the statute makes a distinction between the date of substantial completion and the date of actual occupation. The commission has not modified the proposed text as a result of this comment.

TAB also submitted comments on the definitions rule proposal. The first comment addresses 10 TAC §300.10(9) and the phrase "failure to act." This definition of "construction activities" is current rule language, and it was adopted for use in 10 TAC Chapter 304. See e.g., 10 TAC §304.15(e). A builder is only responsible for damage or defects that are the result of "construction activities." The term was discussed at length during the adoption of those rules, and the commission adopted the definition at that time to make clear that the scope of the builder's responsibilities is for those actions taken or not taken during construction that result in a construction defect. Therefore, the commission declines to modify the proposed definition.

TAB's next comment addresses 10 TAC §300.10 (15) and §300.10 (29). TAB opines that the Act was written for single homes or duplexes and that the phrase "subject to a condominium regime" goes against the Act. TAB cites Chapter 82 of the Property Code for its proposition that property subject to condominium ownership cannot be treated differently under Title 16, Property Code. The phrase represents the commission's policy decision on whether properties subject to condominium regimes are subject to the provisions of Title 16. Property Code, §82.006 is inapposite here. However, at this time, the commission will delete the phrase from these two subsections and revisit the question of whether Title 16, Property Code, applies to single family homes and duplexes that are subject to a condominium regime.

TAB's last comment addresses 10 TAC §300.10(25). TAB points out that §430.001 of the Property Code states the time limits for the limited statutory warranties. TAB is concerned that the proposed language signals the commission's belief that it can set the warranty periods. The rule language is a result of comments received indicating that the rule definition requires readers to consult the statute in addition to reading the rule. However, the commission agrees that the warranty periods are set by statute and not commission rule, so it will modify the proposed rule language.

None of the modifications to the proposed text affect parties not subject to notice by the proposed text as published.

This adoption is adopted pursuant to Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

No other statutes, articles, or codes are affected by the proposal.

§300.10. Definitions.

The following words and terms, when used in rules promulgated by the commission, shall have the following meanings unless the context of the rule clearly indicates otherwise.

(1) Accrual or accrued--when a homeowner first discovers a condition in the home that indicates there may be a construction defect.

(2) Act--the Texas Residential Construction Commission Act, Title 16, Property Code.

(3) Affiliate--a person who directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person.

(4) Builder--any person who, for a fixed price, commission, fee, wage, or other compensation, sells, constructs, or supervises or manages the construction of, or contracts for the construction of or the supervision or management of the construction of:

(A) a new home;

(B) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(C) an improvement to the interior of an existing home when the cost of the work exceeds $10,000.

(D) When the rule context requires, the term includes

(i) an owner, officer, director, shareholder, partner, affiliate, subsidiary, or employee of the builder;

(ii) a risk retention group governed by Article 21.54, Insurance Code, that insures all or any part of a builder's liability for the cost to repair a residential construction defect; and

(iii) a third party warranty company and its administrator.

(E) The term does not include any person who:

(i) has been issued a license by this state or an agency of this state to practice a trade or profession related to or affiliated with residential construction if the work being done by the entity or individual to the home is solely for the purpose for which the license was issued; or

(ii) sells a new home and:

(I) does not construct or supervise or manage the construction of the home; and

(II) holds a license issued under Chapter 1101, Occupations Code, or is exempt from that chapter under §1101.005, Occupations Code; or

(iii) a homeowner or to a homeowner's real estate broker, agent, interior designer registered under Chapter 1053, Occupations Code, interior decorator, or property manager who supervises or arranges for the construction of an improvement to a home owned by the homeowner.

(F) The term does not include a nonprofit business entity that is exempt from taxation under §501(c)(3), Internal Revenue Code, if:

(i) the construction or supervision or management of the construction of the home, material improvement, or improvement sold by the nonprofit business entity is performed by a builder registered under this title;

(ii) the builder contractually agrees to comply with the provisions of this title;

(iii) the builder is contractually liable to the homeowner for the warranties and building and performance standards of this title; and

(iv) the nonprofit business entity does not participate directly in the construction of the home, material improvement, or improvement.

(5) Builder in good standing--a builder or remodeler that has a current active certificate of registration issued by the commission and that has no unpaid fees or administrative penalties due and owing to the commission.

(6) Commencement of construction--when goods, materials, or equipment has been delivered to the job site for use in the construction of a new home, or a material improvement or an interior improvement to an existing home.

(7) Commission--the Texas Residential Construction Commission, including commission staff when performing the functions of their employment in furtherance of the commission's mission and purpose.

(8) Complaint--a written expression of concern about a registered builder or remodeler's registration status, construction practices or business practices. A complaint does not include a request submitted under Property Code §428.001.

(9) Construction Activities--an action taken or a failure to act by the builder/remodeler, or its employees, agents, contractors or subcontractors, during the process of building a home, or a material improvement or an interior improvement to an existing home.

(10) Construction defect--

(A) the failure of the design, construction or repair of a home, an alteration of or a repair, addition or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period caused by the action or inaction of the builder, or its employees, agents, contractors or subcontractors; and

(B) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(11) Cosmetic deficiency--any marred, scuffed, scratched or smudged painted surface or countertop; chipped or stained porcelain, tile, grout, or fiberglass; chipped surfaces of appliances or plumbing fixtures; torn or defective window or door screens; marred, smudged, scratched or stained cabinet surfaces or finishes; or, broken, chipped or scratched glass, window or mirror.

(12) Duplex--a single residential structure with two separate dwelling units.

(13) Dwelling unit--a residential structure providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(14) Executive Director--the individual employed by the commission as the chief executive for the agency or any person to whom the Executive Director has delegated the authority to act on behalf of the Executive Director.

(15) Home--the real property, improvements and appurtenances thereto for a single family dwelling unit or duplex.

(16) ICC--the International Code Council, Inc., currently located at 5203 Leesburg Pike, Suite 600, Falls Church, Virginia, 22041-3401, or at a subsequent address, and any successor organization that performs substantially the same functions that the ICC performs as of December 1, 2003.

(17) Improvement to the interior of an existing home when the cost of the work exceeds $10,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of $10,000 to be paid by a homeowner to a single builder or remodeler that involves the coordination of trades

or multiple subcontractors or the work involves structural components or the penetration of the home's diaphragm. The definition specifically excludes improvements designed primarily to replace a single component part, such as the replacement of one type of floor covering with another, or to make similar cosmetic changes to interior surfaces, such as replacing laminate countertops with tile.

(18) Living space--the enclosed area in a home that is heated or air-conditioned so that it is suitable for year-round residential use.

(19) Local building official--the agency or department of a municipality, county or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of homes in that locality.

(20) Material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement includes modifications to an existing home that requires the addition of new structural components or the modification of the home's existing structural components, but does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(21) One or two family residential dwelling--a building that contains one or two dwelling units, including a townhouse, complete with independent living facilities for one or more persons suitable for one household, including permanent provisions for living, sleeping, eating, cooking and sanitation, which is not used as a commercial structure.

(22) Person--an individual, political subdivision, partnership, company, corporation, association, or any other legal entity, however organized.

(23) Remodeler--a person who is a builder under the definition thereof in this section and who enters into an agreement with a homeowner to make material improvements to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $10,000.

(24) State Inspector--a person employed by the commission whose duties include serving as a member of an appellate panel to:

(A) review the recommendations of third-party inspectors;

(B) provide consultation to third-party inspectors; and

(C) administer the state-sponsored inspection and dispute resolution process through the assignment of third-party inspectors.

(25) Statutory warranty--the legal requirement that the component parts of a home perform to the building and performance standards applicable to the construction for the number of years as set in statute, to wit:

(A) one year for workmanship and materials;

(B) two years for plumbing, electrical, heating, and air conditioning delivery systems;

(C) ten years for major structural components of the home; and

(D) ten years for the warranty of habitability.

(26) Structural failure--for purposes of Property Code §429.001(b) only, the term means non-compliance with the commission-adopted performance standards for major structural components, if applicable to the construction. For purposes of Property Code §429.001(b), if the commission-adopted performance standards do not apply, the term means non-compliance with any applicable written performance standard agreed to between the parties for structural components of a home, or if there are no written performance standards, the term means non-compliance with the usual and customary standards for construction of a structural component of the home such that the structural integrity of the home is compromised or the integrity and performance of the affected structural system is compromised.

(27) Substantial Completion--the later of:

(A) the stage of construction when a new home, addition, improvement, or alteration to an existing home is sufficiently complete that the home, addition, improvement or alteration can be occupied or used for its intended purpose; or

(B) if required, the issuance of a final certificate of inspection or occupancy by the applicable governmental authority.

(28) Third-party inspector--a person approved by the commission to conduct an objective home inspection and prepare a report of that inspection as part of the state-sponsored inspection and dispute resolution process.

(29) Townhouse--a single-family dwelling unit constructed in a group of three or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides not more than three stories in height with a separate means of ingress and egress.

(30) Transaction governed by the Act--an agreement between a homeowner and a builder:

(A) for the construction of a new home; or

(B) for construction on an existing home that is:

(i) a material improvement to the home other than an improvement solely to replace or repair the roof; or

(ii) an improvement to the interior of the home when the cost paid for the work exceeds $10,000.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800884
Susan K. Durso
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Texas Residential Construction Commission
Effective date: March 4, 2008
Proposal publication date: January 4, 2008
For further information, please call: (512) 463-2886

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CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.1

The Texas Residential Construction Commission ("commission") adopts the repeal of 10 TAC §301.1, concerning definitions adopted by the commission without changes to the proposal as

published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 22).

The repeal is part of an overall plan to consolidate rules found in 10 Texas Administrative Code Chapters 300, 301, and 302 as part of an agency rule review undertaken pursuant to requirements of Government Code §2001.039. The repeal is proposed pursuant to an overall plan to consolidate agency administrative rules into a single chapter under the agency's rule review plan. The agency is currently reviewing its rules pursuant to the requirements of Government Code §2001.039.

The commission received no comments on the proposed repeal.

The repeal is adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

No other statutes, articles, or codes are affected by the repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 303. REGISTRATION
SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

10 TAC §303.212

The Texas Residential Construction Commission adopts new 10 Texas Administrative Code §303.212, Third-party Inspector Civil Liability without changes to the proposed text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 23). The new rule is needed to implement a new statutory provision, Property Code §427.003, which was added to the Act by the 80th Texas Legislature in House Bill 1038. The change reduces the impact of liability and the cost of personal liability insurance that some third-party inspectors purchase to protect themselves regarding work performed in their professional capacity. The new statute states that third-party inspectors and state inspectors will be afforded protection from liability for damages in civil actions for acts or omissions in the scope of duties as an inspector in the state-sponsored inspection process. Third-party inspectors do not enjoy protection from liability from damages if the inspector acts with wanton and willful disregard for the rights, safety, or property of another. Similarly, the third-party inspectors do not enjoy protection from liability for damages resulting from an intentional act of misconduct or gross negligence. New §303.212 implements this statutory change.

New §303.212 also requires that a third-party inspector who is sued directly, i.e., who is named individually as a defendant in a civil action, notify the commission in writing within ten days of being served. The new subsection will allow the commission an opportunity to track how often the third-party inspectors are sued in civil lawsuits in the course of performing their duties on behalf of the commission. This information may aid the commission's determination of whether a third-party inspector should be assigned responsibility for inspections to be performed pursuant to the State-sponsored Inspection and Dispute Resolution Process (SIRP), or whether the assignment of SIRP inspections to an inspector should be deferred while a lawsuit or proceeding is pending.

One comment was received on the proposed text from Robert Siebert, an attorney with Davis & Davis, P.C., who submitted comments on behalf of his client, The Home Depot, U.S.A, Inc. (Home Depot). Home Depot expresses its concern with subsection (b) of the proposed rule, in that the language of the proposed rule preamble states that the rule requires a third-party inspector "who is named individually as a defendant in a civil action" to inform the commission of the suit. Home Depot states that this leaves out the possibility that the third-party inspector could be sued in its corporate capacity. Home Depot also notes that Title 16 of the Property Code does not provide the commission express statutory authority to collect this information.

Although the statutory language in Property Code §427.003 refers to legal persons acting as third-party and state inspectors, the commission only registers third-party inspectors in their individual capacities and only pays them in their individual capacities for work performed pursuant to the state-inspection process.

While there is not express authority for the commission to request this information from registered third-party inspectors, the commission has authority over the state-inspection process and has an obligation to protect the integrity of that process. The commission's interest in obtaining information about suits naming third-party inspectors who perform inspection in the State-sponsored Inspection and Dispute Resolution Process (SIRP) is to be aware of potential problems with a particular third-party inspector who is working under the aegis of the commission when conducting state-inspections. This information may aid the commission's determination of whether a third-party inspector should be assigned responsibility for inspections to be performed pursuant to the SIRP, or whether the assignment of SIRP inspections to an inspector should be deferred while a lawsuit or proceeding is pending.

For the reasons stated above, the commission adopted the rule language as proposed.

The commission adopts the new rule under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code; under Property Code §427.003, as promulgated by House Bill 1038; and under Government Code §§2001.021-2001.039, especially §2001.39, which requires state agencies to periodically review their rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 307. INSPECTIONS OF HOMES IN AREAS WITHOUT MUNICIPAL INSPECTIONS

10 TAC §§307.1 - 307.7

The Texas Residential Construction Commission adopts new Chapter 307, §§307.3 and 307.5 - 307.7, as part of Texas Administrative Code, Title 10, Part 7, relating to inspections of homes in areas without municipal inspections, without changes to the text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 24). The Texas Residential Construction Commission adopts new §§307.1, 307.2 and 307.4 with changes to the proposed text as discussed herein.

The new chapter implements new legislation enacted during the 80th Legislative Session, Regular Session, House Bill 1038 (Act effective Sept. 1, 2007, 80th Legislature, Regular Session), which includes changes to Title 16, Property Code. The chapter provides criteria for the inspection of homes which heretofore were not subject to the inspection codes of a municipality. The requirements of this chapter will result in homes that are in greater compliance with the accepted residential building standards, safer, and with fewer construction defects.

The commission will develop an online system for reporting inspection results. The commission will develop a numbering system that will accommodate a 24 character alpha-numeric identifier that allows builders and remodelers to assign project numbers that can be utilized by fee inspectors to report inspection results. At the time of home registration by the builder, the builder/remodeler will report the project number it assigned to the project so that inspection results and project registration can be associated. If a home registration for a project subject to inspection under this chapter is not associated with inspection results already reported, the builder/remodeler will be given an opportunity to correct any reporting errors before a completion certificate is forwarded to the homeowner.

The commission received a comment regarding the proposed new chapter from Steve Thompson of Damark Homes, Inc. Mr. Thompson expressed concern that the new chapter would introduce more opportunities for conflict between remodeling contractors and inspectors, stating that remodelers already have problems with real estate inspectors who try to force them to bring old residences into compliance with codes when it is not required.

The commission believes that the scope of a remodeling project will determine those elements of construction that must be inspected to ensure compliance with applicable code provisions. Elements that are not part of the remodeling project will not be subject to the inspection requirements. The commission acknowledges that disputes might arise regarding whether a particular element is part of a remodeling project that must be inspected. The commission will make determinations of such disputes on a case-by-case as they arise. In the event that particular types of disputes arise on a recurring basis, the commission may consider further rulemaking to clarify the elements of a remodeling project that must be inspected. Property Code §446.005, as enacted by the 80th Texas Legislature as part of House Bill 1038, gives the commission specific authority to promulgate rules that establish the elements of a construction project that must be inspected to ensure compliance with applicable code provisions.

The commission made a minor modification to the text of §307.1 as it was proposed to clarify that for material improvements and interior renovations on existing properties outside areas in which municipal inspections are available, inspections will be required for those listed stages of construction that are within the scope of the project.

The commission received five comments regarding the proposed new chapter from Ned Munoz on behalf of the Texas Association of Builders (TAB). The first comment addresses §307.2 of the new rules related to windstorm insurance compliance inspections. Mr. Munoz expresses concern with the requirement in §307.2 that, for residential construction in an unincorporated area in which windstorm coverage is available under Insurance Code Chapter 2210, a builder or remodeler must obtain a certificate of compliance for the structure in the manner provided under Insurance Code §2210.251, pursuant to the Texas Department of Insurance regulations. Mr. Munoz asserts that Property Code §446.006(b), as enacted by House Bill 1038, only requires a builder to obtain a certificate of compliance for the structure if the builder is required to do so by statute, and argues that there is no statutory requirement requiring builders to obtain a certificate of compliance for all homes in unincorporated areas. He suggests a revision of the proposed text of §307.2 that would require a builder or remodeler to obtain a certificate of compliance for the structure only if required to do so by statute. To the extent that it is unclear that a builder is only required to obtain windstorm certification if it is required by the Act, the commission has made the requested change in §307.2 and §307.4.

Mr. Munoz' second comment relates to the 24-character alpha-numeric identifier that is referenced in the preamble to §307.4 of the new rules as part of the reporting system for residential construction projects in unincorporated areas. Mr. Munoz states that TAB has received comments from some of its members that a 24-character identifier is too long and should be shortened. He asks the commission to keep this in mind as it develops the numbering system.

Prior to publishing the proposed Chapter 307 rules, the commission received comments from the building industry at a public meeting. Industry members repeatedly expressed concern that the commission's project numbering system allow the builder or remodeler to use whatever project numbering system it currently used so that new numbering systems would not have to be created. With that in mind, the commission determined that it would provide enough character spaces to accept most project numbering systems. The rule preamble is not intended to suggest that each project will have to have a 24-character alpha-numeric identifier, but that the commission's system will accommodate up to 24 characters. Therefore, a builder or remodeler may use shorter project numbers if they so desire. The preamble language in this order reflects this intent.

Mr. Munoz' third comment is that §307.4 of the new rules should not require that a certificate of compliance number be provided to the commission unless a certificate of compliance is required by statute, and reasserts his first comment regarding §307.2 of the new rules as discussed above. The commission has modified

§307.4 as discussed above. The commission declines to make a change regarding the language for the alpha numeric identifier for the reasons stated in its response above to Mr. Munoz' first comment.

Mr. Munoz' fourth comment relates to the provision in §307.5 of the new rules that, within 30 days following the registration of a home subject to the inspection provisions of Chapter 307 of the rules, the commission shall issue a certificate of completion to the homeowner and the builder, if the inspection reports have been timely received. Mr. Munoz claims that the 30-day period is too long, that it will cause problems with closings of residential transactions, and that it will lead to an increase in the filings of mechanic's liens because construction funds will not be disbursed until the certificate of completion is issued. Mr. Munoz suggests that the certificates of completion be issued by the commission simultaneously with the registration of the home and the fee inspector's satisfactory inspection report.

Section 307.5 of the new rules tracks the language of Property Code §446.002 that provides the commission 30 days to issue certificates of completion following registration of a home pursuant to Property Code §426.003. Furthermore, the commission believes that "completion" in the context of this code section refers to a compliance with the inspection requirements. Thirty days is a reasonable deadline for the commission's staff to review the inspection reports and registrations of homes that are subject to the inspection requirements of Property Code §446.002. It would be impossible for the commission to simultaneously issue certificates demonstrating compliance on the same date that inspection reports and home registrations are received due to the large volume of home registrations that the commission receives on a daily basis. Section 307.5 does not provide that the commission will take 30 days to issue the certificates of completion in all cases, only that it will have this period of time to issue a certificate of completion if circumstances warrant it. Certificates of completion will be issued as timely as permitted, and the commission anticipates that the amount of time that it takes to issue a certificate of completion will fluctuate depending on the number of filings it receives per period. This being the case, the commission believes that a 30-day period provides necessary flexibility to the commission staff to process the large volume of filings it receives and will receive under the new chapter without unduly prolonging closings. Therefore, the commission will not make changes to the text of §307.5.

However, the commission will provide that the inspector who submits an inspection report will receive verification that the report has been provided as required by this section. The inspector can provide that verification to the builder to demonstrate that compliance with this chapter is complete.

Mr. Munoz' fifth comment relates to the preamble to the new chapter, in which the commission states the builder or remodeler will be given an opportunity to correct any reporting errors with regard to new inspection requirements. Mr. Munoz comments that TAB commends this, but requests that the commission adopt a formal right-to-cure procedure within the rules, and suggests that the commission delay the adoption of the new chapter until a right-to-cure procedure is added.

The commission believes that procedures regarding this issue are established in §307.5(b) of the new chapter. Section 307.5(b) provides that, if the required inspection reports have not been received when a home is registered, the commission will issue a letter notifying the builder and homeowner that the registration was received but that the commission records do not show compliance with the statutory inspection standards for code compliance. It will be up to the builder or remodeler in such a case to effect a cure. The commission believes that §307.5(b) as proposed has a sufficient procedure to address those situations in which a builder or remodeler must cure a particular inspection problem. The commission remains free to amend its procedure in the future if the need arises. Accordingly, the commission will not delay the adoption of new Chapter 307.

The commission also received comments from Rick Herzberger representing Bureau Veritas. Mr. Herzberger suggests that the commission modify §307.3 to require fee inspectors to show particular qualifications in order to act as fee inspectors under Property Code subtitle F. He further recommends that the commission create a list of approved county fee inspectors. Mr. Herzberger expresses Bureau Veritas's concern that, as written, all fee inspectors will not have the qualifications currently required of municipal building inspectors and thus the inspections provided under subtitle F will not be of the same quality of those performed by municipal inspectors. The commission declines to adopt these suggestions because the statute provides that any of the professionals listed in §307.3(a) are qualified to perform the required inspections.

In addition, Mr. Herzberger requested modifications to §307.1, noting that municipalities have five inspections to enforce the International Residential Construction Code, the National Electric Code, plumbing and mechanical codes and the International Energy Conservation Code. Mr. Herzberger reads the intent of subtitle F to replicate municipal inspections in areas in which municipal inspections are not available.

The commission declines to modify the rule as a result of Mr. Herzberger's comments. Section 307.1 provides for inspections at three separate stages of construction. It does not address the matters that will be inspected. The commission intends to address those issues through a uniform reporting format, which will be adopted pursuant to these rules.

The new chapter is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code.

The new rule is proposed to implement Property Code §408.001 and House Bill 1038.

No other statutes, articles, or codes are affected by the proposal.

§307.1. Code Compliance Inspections Required.

(a) A builder or remodeler who enters into an agreement with a homeowner for a transaction governed by the Act and a home located in a geographic area of the state that is not subject to municipal inspection must hire a qualified fee inspector to inspect the construction for applicable code compliance as required by this chapter.

(b) A builder may use the same or a different fee inspector for the inspections required under this chapter.

(c) For new home construction subject to the inspection requirements of this chapter, a fee inspector shall conduct inspections of the construction project for compliance with the applicable codes at the following stages of construction:

(1) the foundation, prior to the placement of concrete;

(2) the framing and mechanical systems prior to the installation of insulation, wall board or other wall covering facing the home's interior; and

(3) the home upon substantial completion and if not occupied, prior to occupancy.

(d) For improvements to an existing home, a fee inspector shall conduct inspections for code compliance, as applicable, at the following stages of construction if those stages are included in the scope of the construction project:

(1) the foundation, prior to the placement of concrete;

(2) the framing and mechanical systems prior to the installation of insulation, wall board or other wall covering facing the home's interior; and

(3) the home upon substantial completion and if not occupied, prior to occupancy.

(e) When conducting inspections under this chapter, fee inspectors will utilize forms promulgated by the commission to record their findings and conclude whether the construction is code compliant.

§307.2. Windstorm Insurance Compliance Inspections.

For residential construction in an unincorporated area in which windstorm coverage is available under Chapter 2210, Insurance Code, if required by statute a builder or remodeler must obtain a certificate of compliance for the structure in the manner provided under §2210.251, Insurance Code, pursuant to the Texas Department of Insurance regulations.

§307.4. Reporting.

(a) The commission will create a unique project numbering system utilizing a builder's registration number for builders and remodelers to assign to each new residential construction project that is subject to the inspection requirements of this chapter. The commission will use the unique project number to track the inspections reported on each project.

(b) A fee inspector who conducts an inspection pursuant to §307.1 of this chapter will:

(1) obtain a unique password from the commission in order to report the satisfactory completion of each inspection performed pursuant to this chapter to the commission; and

(2) report the completion of the inspection using the assigned project number provided by the builder or remodeler via a commission-provided secure Web portal;

(c) Individual fee inspectors who are unable to submit inspection results via the commission's secure Web portal may submit a written request for a waiver. The commission will provide an alternate method for reporting inspection information.

(d) When registering a home subject to the inspection requirements of this chapter, a builder or remodeler will provide the unique project number it assigned to the property and provided to the fee inspector and, if required by statute to obtain a certificate of compliance under §307.2 of this chapter, will report the WI-8 certificate number at the time the home is registered.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §§313.1 - 313.7, 313.11, 313.13, 313.15 - 313.18, 313.20, 313.21, 313.26

The Texas Residential Construction Commission ("commission") adopts amendments to Texas Administrative Code, Title 10, Part 7, §§313.1 - 313.6, 313.11, 313.13, 313.15 - 313.18, 313.20, 313.21, and 313.26, relating to the State-sponsored Inspection and Dispute Resolution Process (SIRP) with no changes to the text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 26). The commission adopts §313.7 with changes to the text as published in the January 4, 2008, issue of the *Texas Register* (33 TexReg 26) and as discussed below. In the December 28, 2007, issue of the *Texas Register* (32 TexReg 10069), the Commission published notice of its intent to review its rules in Texas Administrative Code, Title 10, Part 7, Chapter 313.

Adoption of the amendments is needed to implement recent changes to Property Code, §§401.003, 418.001, 426.001, 426.004 - 426.007, 428.001, 428.003, 428.004, and 429.001, which were made to the Act by the 80th Texas Legislature in House Bill 1038. The commission's review of the rules in Chapter 313 and determination whether the reasons for adopting the rules continue to exist is needed to fulfill the requirements of Government Code, §2001.039.

The adopted rule amendments relate to various aspects of SIRP requests, including deadlines throughout the SIRP process, qualifications for participation, the stakeholders' responsibilities, registration of the home, notice of the existence of the alleged defects, appointment of the inspector by the commission, the third-party inspector's analysis and inspection report, parties' opportunity to appeal the findings included in the inspection report, fees, and offers to repair alleged defects.

The Commission received comments from the Texas Association of Builders (TAB) regarding the amendments proposed to §313.7 and §313.18. The commission received no comments regarding the rule review.

Existing subsection 313.7(d) states that "A homeowner is required to request a SIRP prior to initiating an action for damages or other relief arising from an alleged construction defect." The commission proposed to add "or builder" and proposed renumbering of the subsection. The commission proposed the amended §313.7(f) to read, "A homeowner or builder is required to request a SIRP prior to initiating an action for damages or other relief arising from an alleged construction defect."

TAB comments that the rule language in proposed subsection 313.7(f) is not consistent with the requirements of Property Code, §426.005, which follows.

PROPERTY CODE, §426.005, PREREQUISITE TO ACTION.

(a) A homeowner or builder must comply with this subtitle before initiating *an action for damages or other relief* arising from an alleged construction defect (emphasis added).

(b) An action described by Subsection (a) must be filed:

(1) on or before the expiration of any applicable statute of limitations or by the 45th day after the date the third party inspector issues the inspector's recommendation, whichever is later; or

(2) if the recommendation is appealed, on or before the expiration of any applicable statute of limitations or by the 45th day after the date the commission issues its ruling on the appeal, whichever is later.

(c) Any claim for personal injuries, damages to personal goods, or consequential damages or other relief arising out of an alleged construction defect must be included in any action concerning the construction defect.

(d) This section does not apply to an action that is initiated by a person subrogated to the rights of a claimant if payment was made pursuant to a claim made under an insurance policy.

(e) The legislature has not enacted an (e).

(f) A homeowner is not required to comply with this subtitle if:

(1) at the time a homeowner and a builder enter into a contract covered by this title the builder was not registered; or

(2) the certificate of registration of the builder has been revoked.

TAB asserts that Property Code, subsection 426.005(a), requires that, before initiating an action for damages or other relief, the homeowner or builder is required to comply with Subtitle D of the Act. TAB urges that Subtitle D of the Act requires specific procedures for compliance with the SIRP process, not merely the filing of a SIRP request. TAB states that, although the language exists in the current rule, the language proposed in 10 TAC §313.7(f) does not comport with the requirements of the statute. TAB observes that the language is in conflict with the enabling statute and requests the subsection be amended to match the applicable statute.

In response to TAB's comment that 10 TAC §313.7(f) is inconsistent with Property Code, §426.005, the commission modifies its rule. Property Code, Subtitle D, relates to the state-sponsored inspection and dispute resolution process, statutory warranty, and building and performance standards. Property Code, §426.005(a), states that, before a homeowner or builder initiates an action for damages or other relief arising from an alleged construction defect, the applicant must comply with the provisions of the subtitle. The commission agrees that, prior to initiating a civil action, the homeowner or homebuilder must seek relief through the SIRP process. The commission is not aware of any person who has been confused by the language in §313.7(f) that participation in the SIRP process is a prerequisite to civil action or to understand that merely filing a SIRP request was sufficient to satisfy the requirements of the statute. However, TAB is correct in that compliance with subtitle D of the Property Code is something more than filing a request to initiate the SIRP. Accordingly, 10 TAC §313.7(f) and (g) have been modified to make clear that homeowners, builders, and remodelers must comply with subtitle D before initiating a civil action, except in instances in which the builder or remodeler was not registered and in good standing with the commission at the time of entering the contract.

TAB submits comments regarding proposed 10 TAC §313.18. TAB states that it cannot locate the proposed rule change implementing Property Code, §428.004(e). TAB requests the commission remedy the oversight by adding the statutory provisions in Property Code, subsections 428.004(e) and (f), to rule §313.18(e). In response to TAB's comment, the commission declines to modify the rule. The amendments to Property Code, §428.004, are a codification of the rules already adopted by the agency in which a builder or remodeler who made an offer of repair substantially similar to the recommendations for repair contained in a final unappealable agency inspection report are not required to reimburse the commission for the inspection fee. Rule §313.18(a)(2) implements Property Code, subsections 428.004(e) and (f). A builder that follows the requirements of commission rule §313.18(a)(2) may overcome the presumption that the builder must reimburse the commission for the cost of the inspection and fees paid by the requestor.

The commission adopts the rule amendments under Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. The commission adopts the rule amendments to implement Property Code, §§401.003, 418.001, 426.001, 426.004 - 426.007, 428.001, 428.003, 428.004, and 429.001, as promulgated by House Bill 1038. The rule review is conducted in accordance with Government Code §2001.039, requiring periodic review of the commission's rules to determine whether the reasons for initially adopting the rules in Chapter 313 continue to exist.

The statutory provisions affected by the proposed rule amendments and rule review are set forth in Title 16, Property Code, §§408.001, 401.003, 418.001, 426.001, 426.004 - 426.007, 428.001, 428.003, 428.004, and 429.001, and Government Code, §2001.039.

No other statutes, articles, or codes are affected by the adoption and rule review. As a result of the review, the commission finds that the reasons for initially adopting the rules in Chapter 313 continue to exist.

§313.7. Notice of the Request.

(a) At the time that a request is filed with the commission, the requestor shall send a copy of the request and copies of all information submitted to the commission along with the request, by certified mail, return receipt requested, to all other interested parties to the dispute.

(b) A copy of the request and the submitted information mailed to other interested parties under subsection (a) of this section must also be mailed to counsel for any interested party represented by counsel, if the identity of counsel is known to the requestor.

(c) An interested party who receives notice that a request has been submitted to the commission and who has information pertaining to the determination of eligibility under §313.9 of this chapter shall submit that information to the commission and provide a copy of the information to the requestor within ten days of receiving a copy of the notice of the request.

(d) A respondent who receives a copy of a request may request that additional items be added to the list of alleged defects for inspection. The respondent must provide the request for additional items in writing to both the commission and to the requestor within ten days of receiving a copy of the notice of the request.

(e) When the homeowner receives notice of a SIRP request and declines to participate in the process, the commission will close the file and notify the parties that the homeowner has elected not to participate in the state-inspection process.

(f) A homeowner or builder is required to comply with subtitle D of the Property Code prior to initiating an action for damages or other relief arising from an alleged construction defect.

(g) On or after September 1, 2007, a homeowner may, but is not required to comply with subtitle D of the Property Code if:

(1) at the time a homeowner and builder entered into a contract, the builder was required by Property Code §416.001 to be registered with the commission but was not registered; or

(2) the builder's certificate of registration has been revoked by the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.9

The Texas State Board of Pharmacy adopts amendments to §281.9, concerning Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee. The amendments are adopted without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8652).

The amendments clarify that the board may take disciplinary action if a pharmacy technician or pharmacy technician trainee violates the provisions of a disciplinary order.

No comments were received regarding the proposed amendments.

The amendments are adopted under §§551.002, 554.051, and 568.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §568.003 as authorizing the Board to take disciplinary action against a registrant.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.64

The Texas State Board of Pharmacy adopts amendments to §281.64, concerning Sanctions for Applicants with Criminal Offenses. The amendments are adopted without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8653).

The amendments clarify the terms "probation" and "date of disposition" as used in this section; clarify the guidelines for sanctions against pharmacists and technicians with respect to alcohol-related offenses and offenses involving possession of drugs; and eliminates sanctions for other felony offenses when the date of disposition was over 20 years ago.

No comments were received regarding the proposed amendments.

The amendments are adopted under §§551.002, 554.051, and 568.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §568.003 as authorizing the Board to take disciplinary action against a registrant.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33, §291.34

The Texas State Board of Pharmacy adopts amendments to §291.33, concerning Operational Standards and §291.34, concerning Records. The amendments to §291.33 are adopted without changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8415). The amendments to §291.34 are adopted with changes and will be republished. The changes amend §291.34(b)(3) to be consistent with Senate Bill 997.

The amendments provide guidelines for pharmacists to reuse prescription vials in certain situations, update citations, and allow physicians, dentists, veterinarians, and podiatrists properly licensed in other states to issue telephonic prescriptions for controlled substances to be filled in Texas pharmacies in accordance with Senate Bill 997 passed by the 80th Texas Legislature.

No comments were received regarding the proposed amendments.

The amendments are adopted under §551.002, and §554.051, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.34. Records.

(a) Maintenance of records.

(1) Every inventory or other record required to be kept under the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Requirements), contained in Community Pharmacy (Class A) shall be:

(A) kept by the pharmacy and be available, for at least two years from the date of such inventory or record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in a mutually agreeable electronic format if specifically requested by the board or its representative. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Records of controlled substances listed in Schedules I and II shall be maintained separately from all other records of the pharmacy.

(3) Records of controlled substances, other than prescription drug orders, listed in Schedules III - V shall be maintained separately or readily retrievable from all other records of the pharmacy. For purposes of this subsection, readily retrievable means that the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable apart from all other items appearing on the record.

(4) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

(A) the records maintained in the alternative system contain all of the information required on the manual record; and

(B) the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(b) Prescriptions.

(1) Professional responsibility.

(A) Pharmacists shall exercise sound professional judgment with respect to the accuracy and authenticity of any prescription drug order they dispense. If the pharmacist questions the accuracy or authenticity of a prescription drug order, he/she shall verify the order with the practitioner prior to dispensing.

(B) Prior to dispensing a prescription, pharmacists shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid patient-practitioner relationship.

(C) Subparagraph (B) of this paragraph does not prohibit a pharmacist from dispensing a prescription when a valid patient-practitioner relationship is not present in an emergency situation (e.g. a practitioner taking calls for the patient's regular practitioner).

(2) Written prescription drug orders.

(A) Practitioner's signature.

(i) Except as noted in clause (ii) of this subparagraph, written prescription drug orders shall be:

(I) manually signed by the practitioner; or

(II) electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, provided:

(-a-) that security features of the system require the practitioner to authorize each use; and

(-b-) the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner. (For example, the paper contains security provisions against copying that results in some indication on the copy that it is a copy and therefore render the prescription null and void.)

(ii) Prescription drug orders for Schedule II controlled substances shall be issued on an official prescription form as required by the Texas Controlled Substances Act, §481.075, and be manually signed by the practitioner.

(iii) A practitioner may sign a prescription drug order in the same manner as he would sign a check or legal document, e.g. J.H. Smith or John H. Smith.

(iv) Rubber stamped or otherwise reproduced signatures may not be used except as authorized in clause (i) of this subparagraph.

(v) The prescription drug order may not be signed by a practitioner's agent but may be prepared by an agent for the signature of a practitioner. However, the prescribing practitioner is responsible in case the prescription drug order does not conform in all essential respects to the law and regulations.

(B) Prescription drug orders written by practitioners in another state.

(i) Dangerous drug prescription orders. A pharmacist may dispense a prescription drug order for dangerous drugs issued by practitioners in a state other than Texas in the same manner as prescription drug orders for dangerous drugs issued by practitioners in Texas are dispensed.

(ii) Controlled substance prescription drug orders.

(I) A pharmacist may dispense prescription drug order for controlled substances in Schedule II issued by a practitioner in another state provided:

(-a-) the prescription is filled in compliance with a written plan approved by the Director of the Texas Department of Public Safety in consultation with the Board, which provides the manner in which the dispensing pharmacy may fill a prescription for a Schedule II controlled substance;

(-b-) the prescription drug order is an original written prescription issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration (DEA) registration number, and who may legally prescribe Schedule II controlled substances in such other state; and

(-c-) the prescription drug order is not dispensed after the end of the seventh day after the date on which the prescription is issued.

(II) A pharmacist may dispense prescription drug orders for controlled substances in Schedule III, IV, or V issued by a physician, dentist, veterinarian, or podiatrist in another state provided:

(-a-) the prescription drug order is a written, oral, or telephonically or electronically communicated prescription, as allowed by the DEA issued by a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal DEA registration number, and who may legally prescribe Schedule III, IV, or V controlled substances in such other state;

(-b-) the prescription drug order is not dispensed or refilled more than six months from the initial date of issuance and may not be refilled more than five times; and

(-c-) if there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, a new prescription drug order is obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(C) Prescription drug orders written by practitioners in the United Mexican States or the Dominion of Canada.

(i) Controlled substance prescription drug orders. A pharmacist may not dispense a prescription drug order for a Schedule II, III, IV, or V controlled substance issued by a practitioner in the Dominion of Canada or the United Mexican States.

(ii) Dangerous drug prescription drug orders. A pharmacist may dispense a dangerous drug prescription issued by a person licensed in the Dominion of Canada or the United Mexican States as a physician, dentist, veterinarian, or podiatrist provided:

(I) the prescription drug order is an original written prescription; and

(II) if there are no refill instructions on the original written prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original written prescription drug order have been dispensed, a new written prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of dangerous drugs.

(D) Prescription drug orders carried out or signed by an advanced practice nurse or physician assistant.

(i) A pharmacist may dispense a prescription drug order which is carried out or signed by an advanced practice nurse or physician assistant provided the advanced practice nurse or physician assistant is practicing in accordance with Subtitle B, Chapter 157, Occupations Code.

(ii) Each practitioner shall designate in writing the name of each advanced practice nurse or physician assistant authorized to carry out or sign a prescription drug order pursuant to Subtitle B, Chapter 157, Occupations Code. A list of the advanced practice nurses or physician assistants designated by the practitioner must be maintained in the practitioner's usual place of business. On request by a pharmacist, a practitioner shall furnish the pharmacist with a copy of the written authorization for a specific advanced practice nurse or physician assistant.

(E) Prescription drug orders for Schedule II controlled substances. No Schedule II controlled substance may be dispensed without a written prescription drug order of a practitioner on an official prescription form as required by the Texas Controlled Substances Act, §481.075.

(3) Verbal prescription drug orders.

(A) A verbal prescription drug order from a practitioner or a practitioner's designated agent may only be received by a pharmacist or a pharmacist-intern under the direct supervision of a pharmacist.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions verbally for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense a verbal prescription drug order for a dangerous drug or a controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(4) Electronic prescription drug orders. For the purpose of this subsection, prescription drug orders shall be considered the same as verbal prescription drug orders.

(A) An electronic prescription drug order may be transmitted by a practitioner or a practitioner's designated agent:

(i) directly to a pharmacy; or

(ii) through the use of a data communication device provided:

(I) the confidential prescription information is not altered during transmission; and

(II) confidential patient information is not accessed or maintained by the operator of the data communication device other than for legal purposes under federal and state law.

(B) A practitioner shall designate in writing the name of each agent authorized by the practitioner to electronically transmit prescriptions for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(C) A pharmacist may not dispense an electronic prescription drug order for a:

(i) Schedule II controlled substance, except as authorized for faxed prescriptions in §481.074, Health and Safety Code; or

(ii) dangerous drug or controlled substance issued by a practitioner licensed in the Dominion of Canada or the United Mexican States unless the practitioner is also licensed in Texas.

(5) Original prescription drug order records.

(A) Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(B) If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(C) Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III - V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(D) Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (C) of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(6) Prescription drug order information.

(A) All original prescriptions shall bear:

(i) name of the patient, or if such drug is for an animal, the species of such animal and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) intended use for the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(viii) date of issuance.

(B) All original electronic prescription drug orders shall bear:

(i) name of the patient, if such drug is for an animal, the species of such animal, and the name of the owner;

(ii) address of the patient, provided, however, a prescription for a dangerous drug is not required to bear the address of the patient if such address is readily retrievable on another appropriate, uniformly maintained pharmacy record, such as medication records;

(iii) name, and if for a controlled substance, the address and DEA registration number of the practitioner;

(iv) name and strength of the drug prescribed;

(v) quantity prescribed;

(vi) directions for use;

(vii) indications for use, unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(viii) date of issuance;

(ix) a statement which indicates that the prescription has been electronically transmitted (e.g., Faxed to or electronically transmitted to:);

(x) name, address, and electronic access number of the pharmacy to which the prescription was transmitted;

(xi) telephone number of the prescribing practitioner;

(xii) date the prescription drug order was electronically transmitted to the pharmacy, if different from the date of issuance of the prescription; and

(xiii) if transmitted by a designated agent, the full name of the designated agent.

(C) All original written prescriptions carried out or signed by an advanced practice nurse or physician assistant in accordance with Subtitle B, Chapter 157, Occupations Code, shall bear:

(i) name and address of the patient;

(ii) name, address, telephone number, and if the prescription is for a controlled substance, the DEA number of the supervising practitioner;

(iii) name, identification number, original signature and if the prescription is for a controlled substance, the DEA number of the advanced practice nurse or physician assistant;

(iv) address and telephone number of the clinic at which the prescription drug order was carried out or signed;

(v) name, strength, and quantity of the drug;

(vi) directions for use;

(vii) indications for use, if appropriate;

(viii) date of issuance; and

(ix) number of refills authorized.

(D) At the time of dispensing, a pharmacist is responsible for documenting the following information on either the original hard-copy prescription or in the pharmacy's data processing system:

(i) unique identification number of the prescription drug order;

(ii) initials or identification code of the dispensing pharmacist;

(iii) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(iv) quantity dispensed, if different from the quantity prescribed;

(v) date of dispensing, if different from the date of issuance; and

(vi) brand name or manufacturer of the drug product actually dispensed, if the drug was prescribed by generic name or if a drug product other than the one prescribed was dispensed pursuant to the provisions of the Act, Chapters 562 and 563.

(7) Refills.

(A) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order.

(B) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(C) Refills of prescription drug orders for dangerous drugs or nonprescription drugs.

(i) Prescription drug orders for dangerous drugs or nonprescription drugs may not be refilled after one year from the date of issuance of the original prescription drug order.

(ii) If one year has expired from the date of issuance of an original prescription drug order for a dangerous drug or nonprescription drug, authorization shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(D) Refills of prescription drug orders for Schedules III - V controlled substances.

(i) Prescription drug orders for Schedules III - V controlled substances may not be refilled more than five times or after six months from the date of issuance of the original prescription drug order, whichever occurs first.

(ii) If a prescription drug order for a Schedule III, IV, or V controlled substance has been refilled a total of five times or if six months have expired from the date of issuance of the original prescription drug order, whichever occurs first, a new and separate prescription drug order shall be obtained from the prescribing practitioner prior to dispensing any additional quantities of controlled substances.

(E) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(i) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(ii) either:

(I) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(II) the pharmacist is unable to contact the practitioner after a reasonable effort;

(iii) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(iv) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(v) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vi) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(7) of this title; and

(viii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clauses (i) and (ii) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (iii) - (v) of this subparagraph.

(c) Patient medication records.

(1) A patient medication record system shall be maintained by the pharmacy for patients to whom prescription drug orders are dispensed.

(2) The patient medication record system shall provide for the immediate retrieval of information for the previous 12 months which is necessary for the dispensing pharmacist to conduct a prospective drug regimen review at the time a prescription drug order is presented for dispensing.

(3) The pharmacist-in-charge shall assure that a reasonable effort is made to obtain and record in the patient medication record at least the following information:

(A) full name of the patient for whom the drug is prescribed;

(B) address and telephone number of the patient;

(C) patient's age or date of birth;

(D) patient's gender;

(E) any known allergies, drug reactions, idiosyncrasies, and chronic conditions or disease states of the patient and the identity of any other drugs currently being used by the patient which may relate to prospective drug regimen review;

(F) pharmacist's comments relevant to the individual's drug therapy, including any other information unique to the specific patient or drug; and

(G) a list of all prescription drug orders dispensed (new and refill) to the patient by the pharmacy during the last two years. Such list shall contain the following information:

(i) date dispensed;

(ii) name, strength, and quantity of the drug dispensed;

(iii) prescribing practitioner's name;

(iv) unique identification number of the prescription; and

(v) name or initials of the dispensing pharmacists.

(4) A patient medication record shall be maintained in the pharmacy for two years. If patient medication records are maintained in a data processing system, all of the information specified in this subsection shall be maintained in a retrievable form for two years and information for the previous 12 months shall be maintained on-line. Effective January 1, 2009, a patient medication record must contain documentation of any modification, change, or manipulation to a patient profile.

(5) Nothing in this paragraph shall be construed as requiring a pharmacist to obtain, record, and maintain patient information other than prescription drug order information when a patient or patient's agent refuses to provide the necessary information for such patient medication records.

(d) Prescription drug order records maintained in a manual system.

(1) Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(2) Refills.

(A) Each time a prescription drug order is refilled, a record of such refill shall be made:

(i) on the back of the prescription by recording the date of dispensing, the written initials or identification code of the dispensing pharmacist, effective January 1, 2009, the initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable, and the amount dispensed. (If the pharmacist merely initials and dates the back of the prescription drug order, he or she shall be deemed to have dispensed a refill for the full face amount of the prescription drug order); or

(ii) on another appropriate, uniformly maintained, readily retrievable record, such as medication records, which indicates by patient name the following information:

(I) unique identification number of the prescription;

(II) name and strength of the drug dispensed;

(III) date of each dispensing;

(IV) quantity dispensed at each dispensing;

(V) initials or identification code of the dispensing pharmacist;

(VI) effective January 1, 2009, initials or identification code of the pharmacy technician or pharmacy technician trainee preparing the prescription label, if applicable; and

(VII) total number of refills for the prescription.

(B) If refill records are maintained in accordance with subparagraph (A)(ii) of this paragraph, refill records for controlled substances in Schedules III - V shall be maintained separately from refill records of dangerous drugs and nonprescription drugs.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted on the original prescription, in addition to the documentation of dispensing the refill.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

(A) the transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis;

(B) the transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills;

(C) the transfer is communicated directly between pharmacists and/or pharmacist interns;

(D) both the original and the transferred prescription drug order are maintained for a period of two years from the date of last refill;

(E) the pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription drug order is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer;

(F) the pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(5) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraph (4) of this subsection.

(6) Effective January 1, 2009, each time a modification, change, or manipulation is made to a record of dispensing, documentation of such change shall be recorded on the back of the prescription or on another appropriate, uniformly maintained, readily retrievable record, such as medication records. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration.

(e) Prescription drug order records maintained in a data processing system.

(1) General requirements for records maintained in a data processing system.

(A) Compliance with data processing system requirements. If a Class A (community) pharmacy's data processing system is not in compliance with this subsection, the pharmacy must maintain a manual recordkeeping system as specified in subsection (d) of this section.

(B) Original prescriptions. Original prescriptions shall be maintained in three files as specified in subsection (b)(5)(C) of this section.

(C) Requirements for backup systems.

(i) The pharmacy shall maintain a backup copy of information stored in the data processing system using disk, tape, or other electronic backup system and update this backup copy on a regular basis, at least monthly, to assure that data is not lost due to system failure.

(ii) Data processing systems shall have a workable (electronic) data retention system which can produce an audit trail of drug usage for the preceding two years as specified in paragraph (2)(G) of this subsection.

(D) Change or discontinuance of a data processing system.

(i) Records of dispensing. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records of dispensing to the new data processing system; or

(II) purge the records of dispensing to a printout which contains the same information required on the daily printout as specified in paragraph (2)(B) of this subsection. The information on this hard-copy printout shall be sorted and printed by prescription number and list each dispensing for this prescription chronologically.

(ii) Other records. A pharmacy that changes or discontinues use of a data processing system must:

(I) transfer the records to the new data processing system; or

(II) purge the records to a printout which contains all of the information required on the original document.

(iii) Maintenance of purged records. Information purged from a data processing system must be maintained by the pharmacy for two years from the date of initial entry into the data processing system.

(E) Loss of data. The pharmacist-in-charge shall report to the board in writing any significant loss of information from the data processing system within 10 days of discovery of the loss.

(2) Records of dispensing.

(A) Each time a prescription drug order is filled or refilled, a record of such dispensing shall be entered into the data processing system.

(B) Effective January 1, 2009, each time a modification, change or manipulation is made to a record of dispensing, documentation of such change shall be recorded in the data processing system. The documentation of any modification, change, or manipulation to a record of dispensing shall include the identification of the individual responsible for the alteration. Should the data processing system not be able to record a modification, change, or manipulation to a record of dispensing, the information should be clearly documented on the hard-copy prescription.

(C) The data processing system shall have the capacity to produce a daily hard-copy printout of all original prescriptions dispensed and refilled. This hard-copy printout shall contain the following information:

(i) unique identification number of the prescription;

(ii) date of dispensing;

(iii) patient name;

(iv) prescribing practitioner's name;

(v) name and strength of the drug product actually dispensed; if generic name, the brand name or manufacturer of drug dispensed;

(vi) quantity dispensed;

(vii) initials or an identification code of the dispensing pharmacist;

(viii) effective January 1, 2009, initials or an identification code of the pharmacy technician or pharmacy technician trainee performing data entry of the prescription, if applicable;

(ix) if not immediately retrievable via CRT display, the following shall also be included on the hard-copy printout:

(I) patient's address;

(II) prescribing practitioner's address;

(III) practitioner's DEA registration number, if the prescription drug order is for a controlled substance;

(IV) quantity prescribed, if different from the quantity dispensed;

(V) date of issuance of the prescription drug order, if different from the date of dispensing; and

(VI) total number of refills dispensed to date for that prescription drug order; and

(x) effective January 1, 2009, any changes made to a record of dispensing.

(D) The daily hard-copy printout shall be produced within 72 hours of the date on which the prescription drug orders were dispensed and shall be maintained in a separate file at the pharmacy. Records of controlled substances shall be readily retrievable from records of noncontrolled substances.

(E) Each individual pharmacist who dispenses or refills a prescription drug order shall verify that the data indicated on the daily hard-copy printout is correct, by dating and signing such document in the same manner as signing a check or legal document (e.g., J.H. Smith, or John H. Smith) within seven days from the date of dispensing.

(F) In lieu of the printout described in subparagraph (C) of this paragraph, the pharmacy shall maintain a log book in which each individual pharmacist using the data processing system shall sign a statement each day, attesting to the fact that the information entered into the data processing system that day has been reviewed by him or her and is correct as entered. Such log book shall be maintained at the pharmacy employing such a system for a period of two years after the date of dispensing; provided, however, that the data processing system can produce the hard-copy printout on demand by an authorized agent of the Texas State Board of Pharmacy. If no printer is available on site, the hard-copy printout shall be available within 72 hours with a certification by the individual providing the printout, which states that the printout is true and correct as of the date of entry and such information has not been altered, amended, or modified.

(G) The pharmacist-in-charge is responsible for the proper maintenance of such records and responsible that such data processing system can produce the records outlined in this section and that such system is in compliance with this subsection.

(H) The data processing system shall be capable of producing a hard-copy printout of an audit trail for all dispensings (original and refill) of any specified strength and dosage form of a drug (by either brand or generic name or both) during a specified time period.

(i) Such audit trail shall contain all of the information required on the daily printout as set out in subparagraph (C) of this paragraph.

(ii) The audit trail required in this subparagraph shall be supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy.

(I) Failure to provide the records set out in this subsection, either on site or within 72 hours constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(J) The data processing system shall provide on-line retrieval (via CRT display or hard-copy printout) of the information set out in subparagraph (C) of this paragraph of:

(i) the original controlled substance prescription drug orders currently authorized for refilling; and

(ii) the current refill history for Schedules III, IV, and V controlled substances for the immediately preceding six-month period.

(K) In the event that a pharmacy which uses a data processing system experiences system downtime, the following is applicable:

(i) an auxiliary procedure shall ensure that refills are authorized by the original prescription drug order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(ii) all of the appropriate data shall be retained for on-line data entry as soon as the system is available for use again.

(3) Authorization of refills. Practitioner authorization for additional refills of a prescription drug order shall be noted as follows:

(A) on the hard-copy prescription drug order;

(B) on the daily hard-copy printout; or

(C) via the CRT display.

(4) Transfer of prescription drug order information. For the purpose of refill or initial dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

(A) The transfer of original prescription drug order information for controlled substances listed in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However, pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum refills permitted by law and the prescriber's authorization.

(B) The transfer of original prescription drug order information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

(C) The transfer is communicated directly between pharmacists and/or pharmacist interns orally by telephone or via facsimile or as authorized in paragraph (5) of this subsection. A transfer completed as authorized in paragraph (5) of this subsection may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(D) Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

(E) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(i) write the word "void" on the face of the invalidated prescription drug order; and

(ii) record on the reverse of the invalidated prescription drug order the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(II) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(III) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(IV) the date of the transfer.

(F) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(i) write the word "transfer" on the face of the transferred prescription drug order; and

(ii) record on the transferred prescription drug order the following information:

(I) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription drug order;

(III) number of valid refills remaining and the date of last refill, if applicable;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; and

(V) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(G) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard copy of a prescription drug order may be made available for informational purposes only, to the patient, a pharmacist or pharmacist intern, and the prescription may be read to a pharmacist or pharmacist intern by telephone.

(H) The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

(I) If the data processing system has the capacity to store all the information required in subparagraphs (E) and (F) of this paragraph, the pharmacist is not required to record this information on the original or transferred prescription drug order.

(J) The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

(5) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records may electronically transfer prescription information if the following requirements are met.

(A) The original prescription is voided and the following information is documented in the records of the transferring pharmacy:

(i) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(ii) the name of the pharmacist or pharmacist intern receiving the prescription drug order information; and

(iii) the date of the transfer.

(B) Pharmacies not owned by the same person may electronically access the same prescription drug order records, provided the owner or chief executive officer of each pharmacy signs an agreement allowing access to such prescription drug order records.

(C) An electronic transfer between pharmacies may be initiated by a pharmacy technician or pharmacy technician trainee acting under the direct supervision of a pharmacist.

(6) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in paragraphs (4) and (5) of this subsection.

(f) Limitation to one type of recordkeeping system. When filing prescription drug order information a pharmacy may use only one of the two systems described in subsection (d) or (e) of this section.

(g) Distribution of controlled substances to another registrant. A pharmacy may distribute controlled substances to a practitioner, another pharmacy, or other registrant, without being registered to distribute, under the following conditions.

(1) The registrant to whom the controlled substance is to be distributed is registered under the Controlled Substances Act to dispense that controlled substance.

(2) The total number of dosage units of controlled substances distributed by a pharmacy may not exceed 5.0% of all controlled substances dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an additional registration to distribute controlled substances.

(3) If the distribution is for a Schedule III, IV, or V controlled substance, a record shall be maintained which indicates:

(A) the actual date of distribution;

(B) the name, strength, and quantity of controlled substances distributed;

(C) the name, address, and DEA registration number of the distributing pharmacy; and

(D) the name, address, and DEA registration number of the pharmacy, practitioner, or other registrant to whom the controlled substances are distributed.

(4) If the distribution is for a Schedule I or II controlled substance, the following is applicable.

(A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222C) to the distributing pharmacy.

(B) The distributing pharmacy shall:

(i) complete the area on the DEA order form (DEA 222C) titled "To Be Filled in by Supplier";

(ii) maintain Copy 1 of the DEA order form (DEA 222C) at the pharmacy for two years; and

(iii) forward Copy 2 of the DEA order form (DEA 222C) to the Divisional Office of the Drug Enforcement Administration.

(h) Other records. Other records to be maintained by a pharmacy:

(1) a permanent log of the initials or identification codes which will identify each dispensing pharmacist by name (the initials or identification code shall be unique to ensure that each pharmacist can be identified, i.e., identical initials or identification codes shall not be used);

(2) Copy 3 of DEA order form (DEA 222C) which has been properly dated, initialed, and filed, and all copies of each unaccepted or defective order form and any attached statements or other documents;

(3) a hard copy of the power of attorney to sign DEA 222C order forms (if applicable);

(4) suppliers' invoices of dangerous drugs and controlled substances; a pharmacist shall verify that the controlled drugs listed on the invoices were actually received by clearly recording his/her initials and the actual date of receipt of the controlled substances;

(5) suppliers' credit memos for controlled substances and dangerous drugs;

(6) a hard copy of inventories required by §291.17 of this title (relating to Inventory Requirements);

(7) hard-copy reports of surrender or destruction of controlled substances and/or dangerous drugs to an appropriate state or federal agency;

(8) a hard copy of the Schedule V nonprescription register book;

(9) records of distribution of controlled substances and/or dangerous drugs to other pharmacies, practitioners, or registrants; and

(10) a hard copy of any notification required by the Texas Pharmacy Act or the sections in this chapter, including, but not limited to, the following:

(A) reports of theft or significant loss of controlled substances to DEA, Department of Public Safety, and the board;

(B) notifications of a change in pharmacist-in-charge of a pharmacy; and

(C) reports of a fire or other disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or other materials used in the diagnosis or treatment of injury, illness, and disease.

(i) Permission to maintain central records. Any pharmacy that uses a centralized recordkeeping system for invoices and financial data shall comply with the following procedures.

(1) Controlled substance records. Invoices and financial data for controlled substances may be maintained at a central location provided the following conditions are met.

(A) Prior to the initiation of central recordkeeping, the pharmacy submits written notification by registered or certified mail to the divisional director of the Drug Enforcement Administration as required by Title 21, Code of Federal Regulations, §1304.04(a), and submits a copy of this written notification to the Texas State Board of Pharmacy. Unless the registrant is informed by the divisional director of the Drug Enforcement Administration that permission to keep central records is denied, the pharmacy may maintain central records commencing 14 days after receipt of notification by the divisional director.

(B) The pharmacy maintains a copy of the notification required in subparagraph (A) of this paragraph.

(C) The records to be maintained at the central record location shall not include executed DEA order forms, prescription drug orders, or controlled substance inventories, which shall be maintained at the pharmacy.

(2) Dangerous drug records. Invoices and financial data for dangerous drugs may be maintained at a central location.

(3) Access to records. If the records are kept on microfilm, computer media, or in any form requiring special equipment to render the records easily readable, the pharmacy shall provide access to such equipment with the records.

(4) Delivery of records. The pharmacy agrees to deliver all or any part of such records to the pharmacy location within two business days of written request of a board agent or any other authorized official.

(j) Ownership of pharmacy records. For the purposes of these sections, a pharmacy licensed under the Act is the only entity which may legally own and maintain prescription drug records.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.74

The Texas State Board of Pharmacy adopts amendments to §291.74, concerning Operational Standards. The amendments are adopted with changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8418). The changes are based on comments received by the Board.

The amendments will clarify the use of formularies in hospitals.

The Texas Society of Health-System Pharmacists and the Texas Hospital Association suggested that the term "interchange" should be used instead of the term "substitute." The Board agreed with the comment. However, the Board voted to postpone changing the proposed language to avoid making a substantial change and instead will propose new language at its May meeting.

The Texas Hospital Association (THA) recommended that §291.74(f)(2)(C)(iv) be changed to conform with the language found in the hospital licensing rules. The Board agreed with the comment and changed the language. THA recommended that the statement "through the practitioner's written approval of the facility's formulary" in §291.74(f)(5)(A)(i) be deleted because it was superfluous and potentially confusing. The Board agreed with the comment and deleted the language.

The amendments are adopted under §§551.002, 554.005(a), and 554.051, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.005(a) as authorizing the Board to regulate the delivery or distribution of a prescription drug or device. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.74. Operational Standards.

(a) Licensing requirements.

(1) A Class C pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) If the institutional pharmacy is owned or operated by a hospital management or consulting firm, the following conditions apply.

(A) The pharmacy license application shall list the hospital management or consulting firm as the owner or operator.

(B) The hospital management or consulting firm shall obtain DEA and DPS controlled substance registrations that are issued in their name, unless the following occurs:

(i) the hospital management or consulting firm and the facility cosign a contractual pharmacy service agreement which assigns overall responsibility for controlled substances to the facility; and

(ii) such hospital pharmacy management or consulting firm maintains dual responsibility for the controlled substances.

(3) A Class C pharmacy which changes ownership shall notify the board within 10 days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(4) A Class C pharmacy which changes location and/or name shall notify the board within 10 days of the change and file for an amended license as specified in §291.3 of this title.

(5) A Class C pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within 10 days of the change following the procedures in §291.3 of this title.

(6) A Class C pharmacy shall notify the board in writing within 10 days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(9) A Class C pharmacy, licensed under the Act, §560.051(a)(3), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1) (Community Pharmacy (Class A)) or the Act, §560.051(a)(2) (Nuclear Pharmacy (Class B)), is not required to secure a license for the such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions), §291.32 of this title (relating to Personnel), §291.33 of this title (relating to Operational Standards), §291.34 of this title (relating to Records), and §291.35 of this title (relating to Official Prescription Records), contained in Community Pharmacy (Class A), or §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(10) A Class C (Institutional) pharmacy engaged in nonsterile compounding of drug products for inpatients of the hospital shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-sterile Preparations);

(11) A Class C (Institutional) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(12) A Class C (Institutional) pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.121 of this title (relating to Remote Pharmacy Services).

(13) A Class C (Institutional) pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.123 of this title (relating to Centralized Prescription Drug or Medication Order Processing) and/or §291.125 of this title (relating to Centralized Prescription Dispensing).

(b) Environment.

(1) General requirements.

(A) The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) The institutional pharmacy shall be properly lighted and ventilated.

(E) The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) The institutional pharmacy shall store antiseptics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The institutional pharmacy shall be enclosed and capable of being locked by key, combination or other mechanical or electronic means, so as to prohibit access by unauthorized individuals. Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) Equipment and supplies. Institutional pharmacies distributing medication orders shall have the following equipment:

(1) typewriter or comparable equipment; and

(2) refrigerator and a system or device (e.g., thermometer) to monitor the temperature and humidity to ensure that proper storage requirements are met.

(d) Library. A reference library shall be maintained that includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and regulations; and

(D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text, such as:

(i) Facts and Comparisons with current supplements;

(ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);

(iii) AHFS Drug Information with current supplements;

(iv) Remington's Pharmaceutical Sciences; or

(v) Clinical Pharmacology;

(3) a current or updated reference on injectable drug products, such as Handbook of Injectable Drugs;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

(I) name of patient;

(II) name of device or drug, strength, and dosage form;

(III) dose prescribed;

(IV) quantity taken;

(V) time and date; and

(VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal.

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph.

(iv) The pharmacist shall verify the withdrawal and perform a drug regimen review as specified in subsection (g)(1)(B) of this section after a reasonable interval, but in no event may such interval exceed seven days.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

(i) name of the drug, strength, and dosage form;

(ii) quantity removed;

(iii) location of floor stock;

(iv) date and time; and

(v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal after a reasonable interval, but in no event may such interval exceed seven days.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(i) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(ii) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(iv) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(D) All drugs shall be stored at the proper temperatures, as defined by the following.

(i) Cold--Any temperature not exceeding 8 degrees Centigrade (46 degrees Fahrenheit). A refrigerator is a cold place in which the temperature is maintained thermostatically between 2 and 8 degrees Centigrade (36 and 46 degrees Fahrenheit). A freezer is a cold place in which the temperature is maintained thermostatically between -20 and -10 degrees Centigrade (-4 and 14 degrees Fahrenheit).

(ii) Cool--Any temperature between 8 and 15 degrees Centigrade (46 and 59 degrees Fahrenheit). An article for which storage in a cool place is directed may, alternatively, be stored in a refrigerator unless otherwise specified in the labeling.

(iii) Room temperature--The temperature prevailing in a working area. Controlled room temperature is a temperature thermostatically between 15 and 30 degrees Centigrade (59 and 86 degrees Fahrenheit).

(iv) Warm--Any temperature between 30 and 40 degrees Centigrade (86 and 104 degrees Fahrenheit).

(v) Excessive heat--Any temperature above 40 degrees Centigrade (104 degrees Fahrenheit).

(vi) Protection from freezing where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility. For the purpose of this section, a formulary is a compilation of pharmaceuticals that reflects the current clinical judgment of a facility's medical staff.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(C) A practitioner may grant approval for pharmacists at the facility to substitute, in accordance with the facility's formulary, for the prescribed drugs on the practitioner's medication orders provided:

(i) the pharmacy and therapeutics committee has developed a formulary;

(ii) the formulary has been approved by the medical staff committee of the facility;

(iii) there is a reasonable method for the practitioner to override any substitution; and

(iv) the practitioner authorizes pharmacists in the facility to substitute on his/her medication orders in accordance with the facility's formulary through his/her written agreement to abide by the policies and procedures of the medical staff and facility.

(3) Prepackaging of drugs.

(A) Distribution within a facility.

(i) Drugs may be prepackaged in quantities suitable for internal distribution by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature; and

(IV) quantity of the drug, if the quantity is greater than one.

(iii) Records of prepackaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker; and

(X) name, initials, or electronic signature of the responsible pharmacist.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(B) Distribution to other Class C (Institutional) pharmacies under common ownership.

(i) Drugs may be prepackaged in quantities suitable for distribution to other Class C (Institutional) pharmacies under common ownership by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(ii) The label of a prepackaged unit shall indicate:

(I) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(II) facility's unique lot number;

(III) expiration date based on currently available literature;

(IV) quantity of the drug, if the quantity is greater than one; and

(V) name of the facility responsible for pre-packaging the drug.

(iii) Records of pre-packaging shall be maintained to show:

(I) name of the drug, strength, and dosage form;

(II) facility's unique lot number;

(III) manufacturer or distributor;

(IV) manufacturer's lot number;

(V) expiration date;

(VI) quantity per prepackaged unit;

(VII) number of prepackaged units;

(VIII) date packaged;

(IX) name, initials, or electronic signature of the prepacker;

(X) name, initials, or electronic signature of the responsible pharmacist; and

(XI) name of the facility receiving the pre-packaged drug.

(iv) Stock packages, prepackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(v) The pharmacy shall have written procedure for the recall of any drug prepackaged for another Class C Pharmacy under common ownership. The recall procedures shall require:

(I) notification to the pharmacy to which the prepackaged drug was distributed;

(II) quarantine of the product if there is a suspicion of harm to a patient;

(III) a mandatory recall if there is confirmed or probable harm to a patient; and

(IV) notification to the board if a mandatory recall is instituted.

(4) Sterile pharmaceuticals prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner except as authorized by the practitioner in compliance with paragraph (2)(C) of this subsection.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Supportive personnel may not receive verbal medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

(I) pharmaceutical care services;

(II) handling, storage and disposal of cytotoxic drugs and waste;

(III) disposal of unusable drugs and supplies;

(IV) security;

(V) equipment;

(VI) sanitation;

(VII) reference materials;

(VIII) drug selection and procurement;

(IX) drug storage;

(X) controlled substances;

(XI) investigational drugs, including the obtaining of protocols from the principal investigator;

(XII) prepackaging and manufacturing;

(XIII) stop orders;

(XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;

(XV) physician orders;

(XVI) floor stocks;

(XVII) drugs brought into the facility;

(XVIII) furlough medications;

(XIX) self-administration;

(XX) emergency drug supply;

(XXI) formulary;

(XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;

(XXIII) control of drug samples;

(XXIV) outdated and other unusable drugs;

(XXV) routine distribution of inpatient medication;

(XXVI) preparation and distribution of sterile pharmaceuticals;

(XXVII) handling of medication orders when a pharmacist is not on duty;

(XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices, drug delivery systems, and first dose monitoring;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff; and

(XXXV) emergency preparedness plan, to include continuity of patient therapy and public safety.

(g) Pharmaceutical care services.

(1) The pharmacist-in-charge shall assure that at least the following pharmaceutical care services are provided to patients of the facility.

(A) Drug utilization review. A systematic ongoing process of drug utilization review shall be developed in conjunction with the medical staff to increase the probability of desired patient outcomes and decrease the probability of undesired outcomes from drug therapy.

(B) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall evaluate medication orders and patient medication records for:

(I) known allergies;

(II) rational therapy--contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions;

(X) proper utilization, including overutilization or underutilization; and

(XI) clinical laboratory or clinical monitoring methods to monitor and evaluate drug effectiveness, side effects, toxicity, or adverse effects, and appropriateness to continued use of the drug in its current regimen.

(ii) The drug regimen review shall be conducted on a prospective basis when a pharmacist is on duty, except for an emergency order, and on a retrospective basis as specified in subsection (e)(1) of this section when a pharmacist is not on duty.

(iii) Any questions regarding the order must be resolved with the prescriber and a written notation of these discussions made and maintained.

(iv) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(C) Education. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies that assure that:

(i) the patient and/or patient's caregiver receives information regarding drugs and their safe and appropriate use; and

(ii) health care providers are provided with patient specific drug information.

(D) Patient monitoring. The pharmacist-in-charge in cooperation with appropriate multi-disciplinary staff of the facility shall develop policies to ensure that the patient's response to drug therapy is monitored and conveyed to the appropriate health care provider.

(2) Other pharmaceutical care services which may be provided by pharmacists in the facility include, but are not limited to, the following:

(A) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practice Act;

(B) administering immunizations and vaccinations under written protocol of a physician;

(C) managing patient compliance programs;

(D) providing preventative health care services; and

(E) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(h) Emergency rooms.

(1) During the times a pharmacist is on duty in the facility any prescription drugs supplied to an outpatient, including emergency department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty in the facility, the following is applicable for supplying prescription drugs from the emergency room.

(A) If the patient has been admitted to the emergency room and assessed by a practitioner at the hospital, the following procedures shall be observed in supplying prescription drugs from the emergency room.

(i) Dangerous drugs and/or controlled substances may only be supplied in accordance with the system of control and accountability for dangerous drugs and/or controlled substances administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(ii) Only dangerous drugs and/or controlled substances listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs and/or controlled substances of the nature and type to meet the immediate needs of emergency room patients.

(iii) Dangerous drugs and/or controlled substances may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(iv) At the time of delivery of the dangerous drugs and/or controlled substances, the practitioner or licensed nurse under the supervision of a practitioner shall appropriately complete the label with at least the following information:

(I) name, address, and phone number of the facility;

(II) date supplied;

(III) name of practitioner;

(IV) name of patient;

(V) directions for use;

(VI) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(VII) quantity supplied; and

(VIII) unique identification number.

(v) The practitioner, or a licensed nurse under the supervision of the practitioner, shall give the appropriately labeled, prepackaged drug to the patient and explain the correct use of the drug.

(vi) A perpetual record of dangerous drugs and/or controlled substances supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(I) date supplied;

(II) practitioner's name;

(III) patient's name;

(IV) brand name and strength of the dangerous drug or controlled substance; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug or controlled substance;

(V) quantity supplied; and

(VI) unique identification number.

(vii) The pharmacist-in-charge, or staff pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(B) If the patient has been admitted to the emergency room of a hospital and a practitioner telephones an order for a dangerous drug to be supplied, the following is applicable.

(i) Dangerous drugs may only be supplied to patients of hospitals after the normal business hours of local pharmacies and when pharmacy services are not reasonably available to the patient.

(ii) The practitioner shall cosign any order for a dangerous drug which is telephoned to the hospital emergency room within 72 hours.

(iii) The practitioner shall have a previous patient/physician relationship with the patient admitted to the emergency room.

(iv) The dangerous drugs may only be supplied in accordance with the system of control and accountability for drugs administered or supplied from the emergency room; such system shall be developed and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(v) Only dangerous drugs listed on the emergency room drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's emergency department committee (or like group or person responsible for policy in that department) and shall consist of dangerous drugs of the nature and type to meet the immediate needs of emergency room patients.

(vi) The dangerous drugs may only be supplied in prepackaged quantities not to exceed a 72-hour supply in suitable containers and appropriately prelabeled (including necessary auxiliary labels) by the institutional pharmacy.

(vii) At any time of delivery of the dangerous drugs, a licensed nurse shall complete the label with at least the following information:

(I) name, address, and phone number of the facility;

(II) date supplied;

(III) name of the practitioner;

(IV) name of the patient;

(V) directions for use;

(VI) brand name and strength of the dangerous drug; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug;

(VII) quantity supplied; and

(VIII) unique identification number.

(viii) A licensed nurse shall give the appropriately labeled, prepackaged dangerous drug to the patient and explain the correct use of the drug.

(ix) A perpetual record of dangerous drugs supplied from the emergency room shall be maintained in the emergency room. Such record shall include the following:

(I) date supplied;

(II) practitioner's name;

(III) patient's name;

(IV) brand name and strength of the dangerous drug; or if no brand name, then the generic name, strength, and the name of the manufacturer or distributor of the dangerous drug;

(V) quantity supplied; and

(VI) unique identification number.

(x) The pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge shall verify the correctness of this record at least once every seven days.

(C) Prior to implementing the procedures for supplying dangerous drugs to emergency room patients of a hospital on the telephone order of a practitioner, as specified in subparagraph (B) of this paragraph, the hospital shall notify the board of its intent to implement this policy. Such notification shall be signed by the hospital administrator, medical director, and pharmacist-in-charge and contain the following information:

(i) the hours the hospital pharmacy is open for pharmacy services; and

(ii) documentation of the lack of pharmacy services after normal business hours of the hospital pharmacy.

(i) Radiology departments.

(1) During the times a pharmacist is on duty, any prescription drugs dispensed to an outpatient, including radiology department patients, may only be dispensed by a pharmacist.

(2) When a pharmacist is not on duty, the following procedures shall be observed in supplying prescription drugs from the radiology department.

(A) Prescription drugs may only be supplied to patients who have been scheduled for an x-ray examination at the facility.

(B) Prescription drugs may only be supplied in accordance with the system of control and accountability for prescription drugs administered or supplied from the radiology department and supervised by the pharmacist-in-charge or staff pharmacist designated by the pharmacist-in-charge.

(C) Only prescription drugs listed on the radiology drug list may be supplied; such list shall be developed by the pharmacist-in-charge and the facility's radiology committee (or like group or persons responsible for policy in that department) and shall consist of drugs for the preparation of a patient for a radiological procedure.

(D) Prescription drugs may only be supplied in prepackaged quantities in suitable containers and prelabeled by the institutional pharmacy with the following information:

(i) name and address of the facility;

(ii) directions for use;

(iii) name and strength of the prescription drug--if generic name, the name of the manufacturer or distributor of the prescription drug;

(iv) quantity;

(v) facility's lot number and expiration date; and

(vi) appropriate ancillary label(s).

(E) At the time of delivery of the prescription drug, the practitioner or practitioner's agent shall complete the label with the following information:

(i) date supplied;

(ii) name of physician;

(iii) name of patient; and

(iv) unique identification number.

(F) The practitioner or practitioner's agent shall give the appropriately labeled, prepackaged prescription drug to the patient.

(G) A perpetual record of prescription drugs supplied from the radiology department shall be maintained in the radiology department. Such records shall include the following:

(i) date supplied;

(ii) practitioner's name;

(iii) patient's name;

(iv) brand name and strength of the prescription drug; or if no brand name, then the generic name, strength, dosage form, and the name of the manufacturer or distributor of the prescription drug;

(v) quantity supplied; and

(vi) unique identification number.

(H) The pharmacist-in-charge, or a pharmacist designated by the pharmacist-in-charge, shall verify the correctness of this record at least once every seven days.

(j) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated medication supply systems.

(A) Authority to use automated medication supply systems. A pharmacy may use an automated medication supply system to fill medication orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated medication supply system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated medication supply system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated medication supply system to fill medication orders shall operate according to a written program for quality assurance of the automated medication supply system which:

(i) requires continuous monitoring of the automated medication supply system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated medication supply system is used to store or distribute medications for administration pursuant to medication orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated medication supply system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review and approval of each original or new medication order filled through the use of the automated medication supply system:

(-a-) before the order is filled when a pharmacist is on duty except for an emergency order;

(-b-) retrospectively within 72 hours in a facility with a full-time pharmacist when a pharmacist is not on duty at the time the order is made; or

(-c-) retrospectively within 7 days in a facility with a part-time or consultant pharmacist when a pharmacist is not on duty at the time the order is made;

(III) provide for access to the automated medication supply system for stocking and retrieval of medications which is limited to licensed healthcare professionals, pharmacy technicians, or pharmacy technician trainees acting under the supervision of a pharmacist;

(IV) provide that a pharmacist is responsible for the accuracy of the restocking of the system. The actual restocking may be performed by a pharmacy technician or pharmacy technician trainee;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated medication supply system;

(VI) require a prospective or retrospective drug regimen review is conducted as specified in subsection (g) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated medication supply system.

(ii) A pharmacy which uses an automated medication supply system to fill medication orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated medication supply system to store or distribute medications for administration pursuant to medication orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated medication supply system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated medication supply system is experiencing downtime;

(ii) procedures for response when an automated medication supply system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board and other appropriate agencies whenever an automated medication supply system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Verification of medication orders prepared by the pharmacy department through the use of an automated medication supply system. A pharmacist must check drugs prepared pursuant to medication orders to ensure that the drug is prepared for distribution accurately as prescribed. This paragraph does not apply to automated medication supply systems used for storage and recordkeeping of medications located outside of the pharmacy department.

(A) This check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed preparation of the medication order and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated medication supply system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked; and

(II) a pharmacist checks the accuracy of the data entry of each original or new medication order entered into the automated medication supply system before the order is filled.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The medication order preparation process must be fully automated from the time the pharmacist releases the medication order to the automated system until a completed medication order, ready for delivery to the patient, is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated medication supply system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated medication supply system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performs any other portion of the medication order preparation process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated medication supply system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after a drug is prepared for distribution but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) The final check of a drug prepared pursuant to a medication order shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new medication order.

(ii) the medication order is prepared, labeled, and made ready for delivery to the patient in compliance with Class C (Institutional) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the medication order has been prepared safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist, pharmacy technician, or pharmacy technician trainee who performs any other portion of the medication order preparation process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2008.

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.131

The Texas State Board of Pharmacy adopts amendments to §291.131, concerning Pharmacies Compounding Non-Sterile Preparations. The amendments are adopted with changes to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8419). The changes are based on comments received by the board.

The amendments implement the provisions of Senate Bill 1274 passed during the 80th Regular Session of the Texas Legislature and outline the procedures for pharmacists to add flavoring to prescriptions and over-the-counter products.

The following comments were received:

The Academy of Compounding Pharmacies commented that the proposed amendments requiring pharmacies to maintain documentation regarding the addition of flavoring to prescriptions were onerous to pharmacists. Hance Scarborough recommended that a beyond-use-date for flavored prescriptions be no longer than 14 days when stored in a refrigerator unless otherwise documented. The Board agreed with the recommendation and changed the rules to allow pharmacies to use a 14 day beyond-use-date in the absence of documentation.

The Texas Pharmacy Association commented that the rules did not reflect the intent of the law and created more work for pharmacists by requiring pharmacies to maintain additional documentation regarding the flavoring of prescription products. The Board agreed with the recommendation and changed the rules to allow pharmacies to use a 14 day beyond-use-date in the absence of documentation.

The Texas Federation of Drug Stores commented that it would be a burden for pharmacies to maintain documentation regarding the flavoring of prescription products. The Texas Federation of Drug Stores recommended that the information be accessed electronically and maintained by the manufacturer. The Board agreed with the comments.

The International Journal of Pharmacy Compounding commented that the addition of any aqueous liquid to a product, such as the addition of flavoring to a prescription medication, alters the products chemical stability and without other documented studies should only be stored in a refrigerator for 14 days. The Board agreed with the comment and changed the rules to allow

pharmacies to use a 14 day beyond-use-date in the absence of documentation.

The amendments are adopted under §§551.002, 554.051, and 554.056 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.056 as authorizing the agency to adopt rules governing the procedures for a pharmacist to add flavoring to commercial products.

The statutes affected by the amendments: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.131. Pharmacies Compounding Non-Sterile Preparations.

(a) Purpose. Pharmacies compounding non-sterile preparations, prepackaging pharmaceutical products and distributing those products shall comply with all requirements for their specific license classification and this section. The purpose of this section is to provide standards for the:

(1) compounding of non-sterile preparations pursuant to a prescription or medication order for a patient from a practitioner in Class A (Community), Class C (Institutional), and Class E (Non-resident) pharmacies;

(2) compounding, dispensing, and delivery of a reasonable quantity of a compounded non-sterile preparation in a Class A (Community), Class C (Institutional) , and Class E (Non-resident) pharmacies to a practitioner's office for office use by the practitioner;

(3) compounding and distribution of compounded non-sterile preparations by a Class A (Community) pharmacy for a Class C (Institutional) pharmacy; and

(4) compounding of non-sterile preparations by a Class C (Institutional) pharmacy and the distribution of the compounded preparations to other Class C (Institutional) pharmacies under common ownership.

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Beyond-use date--The date or time after which the compounded non-sterile preparation shall not be stored or transported or begin to be administered to a patient. The beyond-use date is determined from the date or time when the preparation was compounded.

(2) Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(3) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Occupations Code.

(4) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

(5) Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(6) SOPs--Standard operating procedures.

(7) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

(1) Pharmacist-in-charge. In addition to the responsibilities for the specific class of pharmacy, the pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(A) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised;

(B) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

(C) assuring that the equipment used in compounding is properly maintained;

(D) maintaining an appropriate environment in areas where non-sterile compounding occurs; and

(E) assuring that effective quality control procedures are developed and followed.

(2) Pharmacists. Special requirements for non-sterile compounding.

(A) All pharmacists engaged in compounding shall:

(i) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken or supervised; and

(ii) obtain continuing education appropriate for the type of compounding done by the pharmacist.

(B) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling, and any other materials involved in the compounding process.

(C) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to ensure that errors have not occurred in the compounding process.

(D) A pharmacist is responsible for the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(3) Pharmacy technicians and pharmacy technician trainees. All pharmacy technicians and pharmacy technician trainees engaged in non-sterile compounding shall:

(A) possess the education, training, and proficiency necessary to properly and safely perform compounding duties undertaken;

(B) obtain continuing education appropriate for the type of compounding done by the pharmacy technician or pharmacy technician trainee; and

(C) perform compounding duties under the direct supervision of and responsible to a pharmacist.

(4) Training.

(A) All training activities shall be documented and covered by appropriate SOPs as outlined in subsection (d)(8)(A) of this section.

(B) All personnel involved in non-sterile compounding shall be well trained and must participate in continuing relevant training programs.

(d) Operational Standards.

(1) General requirements.

(A) Non-sterile drug preparations may be compounded in licensed pharmacies:

(i) upon presentation of a practitioner's prescription drug or medication order based on a valid pharmacist/patient/prescriber relationship;

(ii) in anticipation of future prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(iii) in reasonable quantities for office use by a practitioner and for use by a veterinarian.

(B) Non-sterile compounding in anticipation of future prescription drug or medication orders must be based upon a history of receiving valid prescriptions issued within an established pharmacist/patient/prescriber relationship, provided that in the pharmacist's professional judgment the quantity prepared is stable for the anticipated shelf time.

(i) The pharmacist's professional judgment shall be based on the criteria used to determine a beyond-use date outlined in paragraph (5)(C) of this subsection.

(ii) Documentation of the criteria used to determine the stability for the anticipated shelf time must be maintained and be available for inspection.

(iii) Any preparation compounded in anticipation of future prescription drug or medication orders shall be labeled. Such label shall contain:

(I) name and strength of the compounded preparation or list of the active ingredients and strengths;

(II) facility's lot number;

(III) beyond-use date as determined by the pharmacist using appropriate documented criteria as outlined in paragraph (5)(C) of this subsection; and

(IV) quantity or amount in the container.

(C) Commercially available products may be compounded for dispensing to individual patients provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the patient needs the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g. the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) A pharmacy may enter into an agreement to compound and dispense prescription/medication orders for another pharmacy provided the pharmacy complies with the provisions of §291.125 of this title (relating to Centralized Prescription Dispensing).

(F) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-sterile prescription compounding services, which may include specific drug products and classes of drugs.

(G) A pharmacy may not compound veterinary preparations for use in food producing animals except in accordance with federal guidelines.

(H) A pharmacist may add flavoring to a prescription at the request of a patient, the patient's agent, or the prescriber. The pharmacist shall label the flavored prescription with a beyond-use-date that shall be no longer than fourteen days if stored in a refrigerator unless otherwise documented. Documentation of beyond-use-dates longer than fourteen days shall be maintained by the pharmacy electronically or manually and made available to agents of the board on request. A pharmacist may not add flavoring to an over-the-counter product at the request of a patient or patient's agent unless the pharmacist obtains a prescription for the over-the-counter product from the patient's practitioner.

(2) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain a current copy, in hard-copy or electronic format, of Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations.

(3) Environment.

(A) Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of non-sterile preparations, including the placement of equipment and materials. Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activity which is adequate for safe and orderly compounding.

(B) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(C) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition. Supplies necessary for adequate washing shall be accessible in the immediate area of the sink and include:

(i) soap or detergent; and

(ii) air-driers or single-use towels.

(D) If drug products which require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of other drug products, must be used in order to prevent cross-contamination.

(4) Equipment and Supplies. The pharmacy shall:

(A) have a Class A prescription balance, or analytical balance and weights which shall be properly maintained and subject to periodic inspection by the Texas State Board of Pharmacy; and

(B) have equipment and utensils necessary for the proper compounding of prescription drug or medication orders. Such equipment and utensils used in the compounding process shall be:

(i) of appropriate design and capacity, and be operated within designed operational limits;

(ii) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond the desired result;

(iii) cleaned and sanitized immediately prior and after to each use; and

(iv) routinely inspected, calibrated (if necessary), or checked to ensure proper performance.

(5) Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following.

(A) The generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded preparation.

(B) A statement that the preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement).

(C) A beyond-use date after which the compounded preparation should not be used. The beyond-use date shall be determined as outlined in Chapter 795 of the USP/NF concerning Pharmacy Compounding Non-Sterile Preparations including the following:

(i) The pharmacist shall consider:

(I) physical and chemical properties of active ingredients;

(II) use of preservatives and/or stabilizing agents;

(III) dosage form;

(IV) storage containers and conditions; and

(V) scientific, laboratory, or reference data from a peer reviewed source and retained in the pharmacy. The reference data should follow the same preparation instructions for combining raw materials and packaged in a container with similar properties.

(ii) In the absence of stability information applicable for a specific drug or preparation, the following maximum beyond-use dates are to be used when the compounded preparation is packaged in tight, light-resistant containers and stored at controlled room temperatures.

(I) Nonaqueous liquids and solid formulations (Where the manufactured drug product is the source of active ingredient): 25% of the time remaining until the product's expiration date or 6 months, whichever is earlier.

(II) Water-containing formulations (Prepared from ingredients in solid form): Not later than 14 days when refrigerated between 2 - 8 degrees Celsius (36 - 46 degrees Fahrenheit).

(III) All other formulations: Intended duration of therapy or 30 days, whichever is earlier.

(iii) Beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation.

(6) Written drug information. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient should be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate the prescriber, concerning the drug.

(7) Drugs, components, and materials used in non-sterile compounding.

(A) Drugs used in non-sterile compounding shall be a USP/NF grade substances manufactured in an FDA-registered facility.

(B) If USP/NF grade substances are not available, or when food, cosmetics, or other substances are, or must be used, the substance shall be of a chemical grade in one of the following categories:

(i) Chemically Pure (CP);

(ii) Analytical Reagent (AR); or

(iii) American Chemical Society (ACS); or

(iv) Food Chemical Codex; or

(C) If a drug, component or material is not purchased from a FDA-registered facility, the pharmacist shall establish purity and stability by obtaining a Certificate of Analysis from the supplier and the pharmacist shall compare the monograph of drugs in a similar class to the Certificate of Analysis.

(D) A manufactured drug product may be a source of active ingredient. Only manufactured drugs from containers labeled with a batch control number and a future expiration date are acceptable as a potential source of active ingredients. When compounding with manufactured drug products, the pharmacist must consider all ingre-

dients present in the drug product relative to the intended use of the compounded preparation.

(E) All components shall be stored in properly labeled containers in a clean, dry area, under proper temperatures.

(F) Drug product containers and closures shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the compounded drug product beyond the desired result.

(G) Components, drug product containers, and closures shall be rotated so that the oldest stock is used first.

(H) Container closure systems shall provide adequate protection against foreseeable external factors in storage and use that can cause deterioration or contamination of the compounded drug product.

(I) A pharmacy may not compound a preparation that contains ingredients appearing on a federal Food and Drug Administration list of drug products withdrawn or removed from the market for safety reasons.

(8) Compounding process.

(A) All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed for:

(i) the facility;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded preparations.

(B) Any compounded preparation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Any person with an apparent illness or open lesion that may adversely affect the safety or quality of a drug product being compounded shall be excluded from direct contact with components, drug product containers, closures, any materials involved in the compounding process, and drug products until the condition is corrected.

(D) Personnel engaged in the compounding of drug preparations shall wear clean clothing appropriate to the operation being performed. Protective apparel, such as coats/jackets, aprons, hair nets, gowns, hand or arm coverings, or masks shall be worn as necessary to protect personnel from chemical exposure and drug preparations from contamination.

(E) At each step of the compounding process, the pharmacist shall ensure that components used in compounding are accurately weighed, measured, or subdivided as appropriate to conform to the formula being prepared.

(9) Quality Assurance.

(A) Initial formula validation. Prior to routine compounding of a non-sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a product that contains the stated amount of active ingredient(s).

(B) Finished preparation checks. The prescription drug and medication orders, written compounding procedure, preparation records, and expended materials used to make compounded non-sterile preparations shall be inspected for accuracy of correct identities and amounts of ingredients, packaging, labeling, and expected physical appearance before the non-sterile preparations are dispensed.

(10) Quality Control.

(A) The pharmacy shall follow established quality control procedures to monitor the quality of compounded drug preparations for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity, or pH of solutions. When developing these procedures, pharmacy personnel shall consider the provisions of Chapter 795, concerning Pharmacy Compounding Non-Sterile Preparations, Chapter 1075, concerning Good Compounding Practices, and Chapter 1160, concerning Pharmaceutical Calculations in Prescription Compounding contained in the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(C) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit weight or volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

(e) Records.

(1) Maintenance of records. Every record required by this section shall be:

(A) kept by the pharmacy and be available, for at least two years for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies; and

(B) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this section, either on site or within 72 hours, constitutes prima facie evidence of failure to keep and maintain records in violation of the Act.

(2) Compounding records.

(A) Compounding pursuant to patient specific prescription drug or medication orders. Compounding records for all compounded preparations shall be maintained by the pharmacy electronically or manually as part of the prescription drug or medication order, formula record, formula book, or compounding log and shall include:

(i) the date of preparation;

(ii) a complete formula, including methodology and necessary equipment which includes the brand name(s) of the raw materials, or if no brand name, the generic name(s) and name(s) of the manufacturer(s) of the raw materials and the quantities of each;

(iii) signature or initials of the pharmacist or pharmacy technician or pharmacy technician trainee performing the compounding;

(iv) signature or initials of the pharmacist responsible for supervising pharmacy technicians or pharmacy technician trainees and conducting in-process and final checks of compounded preparations if pharmacy technicians or pharmacy technician trainees perform the compounding function;

(v) the quantity in units of finished preparations or amount of raw materials;

(vi) the container used and the number of units prepared;

(vii) a reference to the location of the following documentation which may be maintained with other records, such as quality control records:

(I) the criteria used to determine the beyond-use date; and

(II) documentation of performance of quality control procedures. Documentation of the performance of quality control procedures is not required if the compounding process is done pursuant to a patient specific order and involves the mixing of two or more commercially available oral liquids or commercially available preparations when the final product is intended for external use.

(B) Compounding records when batch compounding or compounding in anticipation of future prescription drug or medication orders.

(i) Master work sheet. A master work sheet shall be developed and approved by a pharmacist for preparations prepared in batch. Once approved, a duplicate of the master work sheet shall be used as the preparation work sheet from which each batch is prepared and on which all documentation for that batch occurs. The master work sheet shall contain at a minimum:

(I) the formula;

(II) the components;

(III) the compounding directions;

(IV) a sample label;

(V) evaluation and testing requirements;

(VI) specific equipment used during preparation; and

(VII) storage requirements.

(ii) Preparation work sheet. The preparation work sheet for each batch of preparations shall document the following:

(I) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(II) lot number or each component;

(III) component manufacturer/distributor or suitable identifying number;

(IV) container specifications;

(V) unique lot or control number assigned to batch;

(VI) beyond use date of batch-prepared preparations;

(VII) date of preparation;

(VIII) name, initials, or electronic signature of the person(s) involved in the preparation;

(IX) name, initials, or electronic signature of the responsible pharmacist;

(X) finished preparation evaluation and testing specifications, if applicable; and

(XI) comparison of actual yield to anticipated or theoretical yield, when appropriate.

(f) Office Use Compounding and Distribution of Compounded Preparations to Class C Pharmacies or Veterinarians in Accordance With §563.054 of the Act.

(1) General.

(A) A pharmacy may dispense and deliver a reasonable quantity of a compounded preparation to a practitioner for office use by the practitioner in accordance with this subsection.

(B) A Class A (Community) pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations to a Class C (Institutional) pharmacy.

(C) A Class C (Institutional) pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute non-sterile compounded preparations that the Class C pharmacy has compounded for other Class C pharmacies under common ownership.

(D) To dispense and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(2) Written Agreement. A pharmacy that provides non-sterile compounded preparations to practitioners for office use or to another pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:

(A) address acceptable standards of practice for a compounding pharmacy and a practitioner and receiving pharmacy that enter into the agreement including a statement that the compounded preparations may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity except as authorized by §563.054 of the Act;

(B) require the practitioner or receiving pharmacy to include on a patient's chart, medication order, or medication administration record the lot number and beyond-use date of a compounded preparation administered to a patient; and

(C) describe the scope of services to be performed by the pharmacy and practitioner or receiving pharmacy, including a statement of the process for:

(i) a patient to report an adverse reaction or submit a complaint; and

(ii) the pharmacy to recall batches of compounded preparations.

(3) Recordkeeping.

(A) Maintenance of Records.

(i) Records of orders and distribution of non-sterile compounded preparations to a practitioner for office use or to a Class C (Institutional) pharmacy for administration to a patient shall:

(I) be kept by the pharmacy and be available, for at least two years from the date of the record, for inspecting and copying by the board or its representative and to other authorized local, state, or federal law enforcement agencies;

(II) maintained separately from the records of products dispensed pursuant to a prescription or medication order; and

(III) supplied by the pharmacy within 72 hours, if requested by an authorized agent of the Texas State Board of Pharmacy or its representative. If the pharmacy maintains the records in an electronic format, the requested records must be provided in an electronic format. Failure to provide the records set out in this subsection, either on site or within 72 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records.

(ii) Records may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided the data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

(B) Orders. The pharmacy shall maintain a record of all non-sterile compounded preparations ordered by a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date of the order;

(ii) name, address, and phone number of the practitioner who ordered the preparation and if applicable, the name, address and phone number of the Class C pharmacy ordering the preparation; and

(iii) name, strength, and quantity of the preparation ordered.

(C) Distributions. The pharmacy shall maintain a record of all non-sterile compounded preparations distributed pursuant to an order to a practitioner for office use or by a Class C pharmacy for administration to a patient. The record shall include the following information:

(i) date the preparation was compounded;

(ii) date the preparation was distributed;

(iii) name, strength and quantity in each container of the preparation;

(iv) pharmacy's lot number;

(v) quantity of containers shipped; and

(vi) name, address, and phone number of the practitioner or Class C pharmacy to whom the preparation is distributed.

(D) Audit Trail.

(i) The pharmacy shall store the order and distribution records of preparations for all non-sterile compounded preparations ordered by and or distributed to a practitioner for office use or by a Class C pharmacy for administration to a patient in such a manner as to be able to provide a audit trail for all orders and distributions of any of the following during a specified time period.

(I) any strength and dosage form of a preparation (by either brand or generic name or both);

(II) any ingredient;

(III) any lot number;

(IV) any practitioner;

(V) any facility; and

(VI) any pharmacy, if applicable.

(ii) The audit trail shall contain the following information:

(I) date of order and date of the distribution;

(II) practitioner's name, address, and name of the Class C pharmacy, if applicable;

(III) name, strength and quantity of the preparation in each container of the preparation;

(IV) name and quantity of each active ingredient;

(V) quantity of containers distributed; and

(VI) pharmacy's lot number;

(4) Labeling. The pharmacy shall affix a label to the preparation containing the following information:

(A) name, address, and phone number of the compounding pharmacy;

(B) the statement: "For Institutional or Office Use Only--Not for Resale"; or if the preparation is distributed to a veterinarian the statement: "Compounded Preparation";

(C) name and strength of the preparation or list of the active ingredients and strengths;

(D) pharmacy's lot number;

(E) beyond-use date as determined by the pharmacist using appropriate documented criteria;

(F) quantity or amount in the container;

(G) appropriate ancillary instructions, such as storage instructions or cautionary statements, including hazardous drug warning labels where appropriate; and

(H) device-specific instructions, where appropriate.

(g) Recall Procedures.

(1) The pharmacy shall have written procedure for the recall of any compounded non-sterile preparations provided to a patient, to a practitioner for office use, or to a pharmacy for administration. The recall procedures shall require:

(A) notification to each practitioner, facility, and/or pharmacy to which the preparation was distributed;

(B) notification to each patient to whom the preparation was dispensed;

(C) quarantine of the product if there is a suspicion of harm to a patient; and

(D) a recall if there is probable or confirmed harm to a patient.

(2) If the pharmacy identifies a suspicion of, probable, or confirmed harm to a patient, the pharmacy shall immediately notify and provide information as required by the board to the following:

(A) the Texas Department of State Health Services, Drugs and Medical Devices Group, if the preparation is distributed for office use; and

(B) the board.

(3) The board may require a pharmacy to institute a recall if there is probable or confirmed harm to a patient.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800974
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: March 6, 2008
Proposal publication date: November 23, 2007
For further information, please call: (512) 305-8028

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §§371.3, 371.5, 371.7

The Texas State Board of Podiatric Medical Examiners adopts amendments to §371.3 regarding Fees; §371.5 regarding Applicant for License; and §371.7 regarding Qualifications for licensure without changes to the proposed text that was published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5151). The text will not be republished.

The amendments to §371.3 are being adopted to cover the cost of the Article VIII salary increase contingency rider approved by the 80th Legislature for Article VIII agencies. The amendments to §371.5 are being adopted to allow provisional applicants an equivalent amount of opportunities to hold a license consistent with the number of times an individual may sit for examination for a license, which is 3 times. The amendments to §371.5 are also being adopted to meet the Sunset management requirements adopted by the 79th Legislature to simplify the licensing process for active podiatrists from out of state by eliminating the requirement that they pass a clinical skills exam if it was not required of Texas licensees at the time the out-of-state licensee became licensed. The amendments to §371.7 are being adopted to clarify that the University of Texas at Austin will review foreign transcripts. The amendments to §371.7 are also being adopted to meet the Sunset management requirements adopted by the 79th Legislature to simplify the licensing process for active podiatrists from out of state by eliminating the requirement that they pass a clinical skills exam if it was not required of Texas licensees at the time the out-of-state licensee became licensed.

No comments were received in response to the proposed rule amendments.

The amendments are being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The adopted amendments for §371.3 implements Texas Occupations Code, §202.153, Fees. The adopted amendments for §371.5 implements Texas Occupations Code, §202.254, Examination and §202.260, Provisional License. The adopted amendments for §371.7 implement Texas Occupations Code, §202.252, License Application; §202.254, Examination; and §202.260, Provisional License.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800879
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: March 4, 2008
Proposal publication date: August 17, 2007
For further information, please call: (512) 305-7000

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22 TAC §371.25

The Texas State Board of Podiatric Medical Examiners adopts amendments to §371.25 regarding Residency Program Responsibilities and Temporary Licensure without changes to the proposed text that was published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9519). The text will not be republished.

The amendments are being adopted to make second or third year residency license renewals more efficient and expedient for established residents.

No comments were received in response to the proposed rule amendments.

The amendment is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements Texas Occupations Code, §202.251, License Required and §202.259, Temporary License.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800880
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: March 4, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 305-7000

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CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.31

The Texas State Board of Podiatric Medical Examiners (Board) adopts an amendment to §376.31 regarding Consequences of Background and Criminal History Checks without changes to the proposed text that was published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5153). The text will not be republished.

The amendments are being adopted to meet the Sunset management requirements adopted by the 79th Legislature to adopt rules that list the specific offenses that would permit the Board to revoke, suspend, or deny a license.

No comments were received in response to the proposed rule amendments.

The amendment is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The adopted amendment for §376.31 implements Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction and Texas Occupations Code, §202.253, Grounds for Denial of License.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800881
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: March 4, 2008
Proposal publication date: August 17, 2007
For further information, please call: (512) 305-7000

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CHAPTER 378. CONTINUING EDUCATION AND LICENSE RENEWAL

22 TAC §378.1

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §378.1 concerning Continuing Education Requirement without changes to the proposed text that was published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9520). The text will not be republished.

The amendment is being adopted upon request by the Texas Podiatric Medical Association (TPMA) in response to a nationwide move for healthcare practitioners of all types to attend courses, seminars, workshops, etc. on the issue of medical ethics in addition to rules and regulations pertaining to podiatric medicine in Texas. Furthermore, at the request of the TPMA, also in response to a nationwide move, the amendment is being adopted to increase the biennial CME requirement from 30 to 50 hours to ensure that podiatric physicians are keeping up with current trends in the practice of podiatric medicine.

No comments were received in response to the proposed rule amendment.

The amendment is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The adopted amendment implements Texas Occupations Code, §202.301, Annual License Renewal and §202.305, Continuing Education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800882
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: March 4, 2008
Proposal publication date: December 21, 2007
For further information, please call: (512) 305-7000

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CHAPTER 389. ORGANIZATION AND STRUCTURE

22 TAC §§389.1, 389.3, 389.5, 389.7, 389.9

The Texas State Board of Podiatric Medical Examiners adopts new §§389.1, 389.3, 389.5, 389.7, and 389.9, regarding Organization and Structure. Sections 389.3 and 389.5 are adopted with changes to the proposed text that was published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5154) and will be republished. Sections 389.1, 389.7 and 389.9 are adopted without changes and will not be republished. The changes that were made are under §389.3(3) regarding the definition of *Executive Director*. The proposed language stated "An employee of the Board who manages the day-to-day operations of the Board." We are replacing "An" with "The" to be consistent with the defini-

tion in the statute. The other change was under §389.5(9). The word "of" is being added between "Use" and "their". The new sentence should read "A board member should avoid the use of their official position to imply professional superiority or competence."

The new rules are being adopted to meet the Sunset management requirements adopted by the 79th Legislature to implement policies that clearly separate the policy making responsibilities of the board and the management responsibilities of the Executive Director and staff of the board. These new rules also provide remedies for addressing board member conflicts of interest.

No comments were received in response to the proposed new rules.

The amendment is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

The adopted new rules implement the Texas Occupations Code, §202.101, Division of responsibilities.

§389.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Board*--The Texas State Board of Podiatric Medical Examiners as established and authorized by the Podiatric Medical Practice Act of Texas, Texas Occupations Code, §§202.001, et seq.

(2) *Board Member*--A person lawfully appointed by the governor to serve a term as set by law on the board.

(3) *Executive Director*--The employee of the Board who manages the day-to-day operations of the Board.

(4) *Investigator*--Employee, Agent or Person designated by the board to conduct investigations on behalf of the board. The term includes Podiatric Medical Reviewers.

§389.5. Professional Conduct.

A board member should strive to achieve and project the highest standards of professional conduct. Such standards include:

(1) A board member should not accept or solicit any benefit that might influence the board member in the discharge of official duties or that the board member knows or should know is being offered with the intent to influence official conduct.

(2) A board member should not accept employment or engage in any business or professional activity that would involve the disclosure of confidential information acquired by reason of the official position as a board member.

(3) A board member should not accept employment that could impair independence of judgment in the performance of the board member's official duties.

(4) A board member should not make personal investments that could reasonably be expected to create a conflict between the board member's private interest and the public interest.

(5) A board member should not intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the board member's official powers or performed the board member's official duties in favor of another.

(6) A board member should be fair and impartial in the conduct of the business of the board. A board member should project such fairness and impartiality in any meeting or hearing.

(7) A board member should be diligent in preparing for meetings and hearings.

(8) A board member should avoid conflicts of interests. If a conflict of interest should unintentionally occur, the board member should recuse himself or herself from participating in any matter before the board that could be affected by the conflict.

(9) A board member should avoid the use of their official position to imply professional superiority or competence.

(10) A board member should avoid the use of their official position as an endorsement in any health care related matter. Because an expert witness, by necessity, must disclose the witness's resume, which will include membership on the board, and because any health care related lawsuit could become the subject of a board investigation, a board member should not appear as an expert witness in any case.

(11) A board member should refrain from making any statement that implies that the board member is speaking for the board if the board has not voted on an issue or unless the board has given the board member such authority.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 13, 2008.

TRD-200800883
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: March 4, 2008
Proposal publication date: August 17, 2007
For further information, please call: (512) 305-7000

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists adopts amendments to §461.11, Continuing Education, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5958).

The amendments are being adopted to clarify the requirements for proof of completion of online or self- study continuing education courses.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make

all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2008.

TRD-200800825
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.5

The Texas State Board of Examiners of Psychologists adopts amendments to §463.5, Application File Requirements, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5958).

The amendments are being adopted to clarify to applicants for licensure that the Board requires criminal history record checks as a condition of licensure.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200800826
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.32

The Texas State Board of Examiners of Psychologists adopts amendments to §465.32, Disposition and Assumption of the Practice of a Mental Health Professional, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5959).

The amendments are being adopted to correct grammatical and punctuation errors in this rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2008.

TRD-200800827
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.33

The Texas State Board of Examiners of Psychologists adopts amendments to §465.33, Improper Sexual Conduct, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5960).

The amendments are being adopted to correct grammatical and punctuation errors in this rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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22 TAC §465.35

The Texas State Board of Examiners of Psychologists adopts amendments to §465.35, Resolution of Allegations of Board Rule Violations, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5960).

The amendments are being adopted to correct grammatical and punctuation errors in this rule.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7066

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22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts amendments to §465.38, Psychological Services for Public Schools, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5961).

The amendments are being adopted to allow licensees from other states to count their experience in providing school psychological services in other states towards meeting the qualification requirements in Texas to supervised LSSPs.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.7

The Texas State Board of Examiners of Psychologists adopts amendments to §469.7, Persons with Criminal Backgrounds, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5962).

The amendments are being adopted to coincide with state law.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2008.

TRD-200800831
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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22 TAC §469.12

The Texas State Board of Examiners of Psychologists adopts amendments to §469.12, Suspension of Licensure for Failure to Pay Child Support, with no changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5963).

The amendments are being adopted to make changes to the Board rule in accordance with changes to Chapter 232 of the Family Code made by the 80th Texas Legislature by passage of S.B. 228.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2008.

TRD-200800832
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.21

The Texas State Board of Examiners of Psychologists adopts amendments to §470.21, concerning Disciplinary Guidelines, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7203).

The amendments are being adopted to coincide with state law.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2008.

TRD-200800833
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: October 12, 2007
For further information, please call: (512) 305-7706

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CHAPTER 473. FEES

22 TAC §473.1

The Texas State Board of Examiners of Psychologists adopts amendments to §473.1, Application Fees (Not Refundable), without changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5963).

The amendments are being adopted to cover classified salary pay increase.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2008.

TRD-200800834
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts amendments to §473.3, Annual Renewal Fees (Not Refundable), without changes to the proposed text published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5964).

The amendments are being adopted to cover classified salary pay increase.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2008.

TRD-200800835
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: March 3, 2008
Proposal publication date: September 7, 2007
For further information, please call: (512) 305-7706

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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.27 - 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, 821.57

The Texas Board of Orthotics and Prosthetics (board) adopts amendments to §§821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.27 - 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57, concerning the licensure and regulation of orthotics and prosthetics, without changes to the proposed text as published in the October 12, 2007, issue of the *Texas Register* (32 TexReg 7204) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 821.1 - 821.7, 821.9, 821.15, 821.17, 821.19, 821.21, 821.23, 821.27 - 821.29, 821.31, 821.33, 821.35, 821.37, 821.39, 821.41, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57 have been reviewed and the board has determined that reasons for adopting the sections continue to exist in that rules on this subject are needed. The board, however, readopts the rules with needed revisions as described in this preamble.

Revisions are necessary to clarify and simplify the rules, correct punctuation and remove obsolete or outdated language. In addition, the amendments require clinical residency hours for licensure as an assistant to be supervised by a licensed orthotist and/or prosthetist; correct agency names; establish a complaints committee; reduce licensure and renewal fees and continuing education requirements for persons who are fully licensed in one discipline and licensed as an assistant in the other discipline; correctly identify that the Public Information Act governs the release of public records; allow clinical residency hours to be completed without supervision from a licensee if the hours are accumulated at an exempt federal facility; change the minimum math requirement from trigonometry to algebra for assistant licensure; add language which voids a the temporary license of a person that is not approved by the board for licensure by examination or unique qualifications; require accredited facilities to have Americans with Disabilities Act (ADA) compliant restrooms as well as tools and materials to perform major repairs; require an assistant to be under immediate supervision when providing critical care; removes language that allows a licensed assistant to supervise clinical residency hours; clarify requirements for a temporary license; add language which voids the temporary license issued to a person who is not approved by the board for licensure by examination or unique qualifications; remove language that may allow the transfer of a facility license to another location; allow all licensees, even those serving in Texas, who are on active military duty to renew their licenses late without penalty; include failure to comply with an order issued by the board as grounds for disciplinary action; require the return of a surrendered license; clarify that the board may not impose a civil penalty that exceeds $200 for a first violation of the Act; and change Texas Department of Health to Department of State Health Services.

SECTION-BY-SECTION SUMMARY

Amendments to §821.1 correct punctuation.

Amendments to §821.2 require clinical residency hours for licensure as an assistant to be supervised by a licensed orthotist and/or prosthetist and reflect the name change from Texas State Board of Medical Examiners to Texas Medical Board.

Amendments to §821.3 remove the requirement for the presiding officer to serve as a member of all committees and establishes the Complaints Committee.

Amendments to §821.4 remove references to the Open Records Act and correctly identifies that the Public Information Act governs the release public information.

Amendments to §821.5 reduce licensure and renewal fees for persons who are fully licensed in one discipline and licensed as an assistant in the other discipline.

Amendments to §821.6 allow an application to be voided 30 days after a notice of deficiency is mailed and increase the number of days that the board has to review an application.

Amendments to §821.7 clarify that temporary licenses may be issued for one additional one-year period.

Amendments to §821.9 remove obsolete language.

Amendments to §821.15 clarify that the board, not a committee of the board, determines if a person is uniquely qualified for licensure.

Amendments to §821.17 remove obsolete language and state that an applicant must hold at least a bachelor's degree for licensure.

Amendments to §821.19 require an assistant to be under immediate supervision when providing critical care, change the minimum math requirement from trigonometry to algebra for assis-

tant licensure, and removes language that allows a licensed assistant to supervise clinical residency hours.

Amendments to §821.21 clarify that an executed supervisory agreement form is required to show proof of a current supervisory relationship.

Amendments to §821.23 clarify requirements for a temporary license, add language which voids the temporary license issued to a person who is not approved by the board for licensure by examination or unique qualifications, and remove unnecessary language.

Amendments to §821.27 remove obsolete language.

Amendments to §821.28 clarify that the license upgrade form must be submitted with payment to upgrade a license.

Amendments to §821.29 delete obsolete language, require facilities to notify the board of a change in the practitioner-in-charge before the change is effective, remove language that may allow the transfer of a facility license to another location, establishes that the complaints committee is responsible for recommending disciplinary action against a facility, require facilities to provide chairs without arms or casters, and require facilities to have ADA compliant restrooms and the tools and materials to perform major repairs.

Amendments to §821.31 remove the requirement for accredited facilities to record and perform quarterly evaluations for clinical residents and have an agreement with each resident ensuring liability and malpractice coverage.

Amendments to §821.33 clarify the expiration date of initial licenses and that all licensees, even those serving in Texas, who are on active military duty may renew their licenses late without penalty.

Amendments to §821.35 establish the continuing education requirements for persons who are fully licensed in one discipline and licensed as an assistant in the other discipline.

Amendments to §821.37 clarify that a new application is required if an accredited facility changes location.

Amendments to §821.39 establish a complaints committee and set out the complaint process.

Amendments to §821.41 clarify language, include failure to comply with an order issued by the board as grounds for disciplinary action and establish that the complaints committee recommends disciplinary action.

Amendments to §821.43 clarify language.

Amendments to §821.45 clarify language and add language that includes a default order for denial of application.

Amendments to §821.47 clarify that a surrendered license must be returned to the board.

Amendment to §821.49 clarifies language.

Amendment to §821.51 clarifies that the board may not impose a civil penalty that exceeds $200 for a first violation of the Act.

Amendment to §821.53 removes obsolete language.

Amendment to §821.55 clarifies that the licenses must be posted and visible to all patients.

Amendments to §821.57 require petitions for a rule adoption to include the petitioner's phone number and changes Texas Department of Health to Department of State Health Services.

COMMENTS

The board has reviewed and accepted the comments received regarding the proposed rules during the comment period. The sole commenter was an individual who supported the rules as discussed in the summary of comments.

Comment: Concerning §821.19, one commenter fully supported the change made to the proposed rule.

Response: The board agrees and no change was made as a result of the comment.

STATUTORY AUTHORITY

The amendments are adopted under Texas Occupations Code, Chapter 605, which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation of orthotists and prosthetists.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800977
Richard Neider
Presiding Officer
Texas Board of Orthotics and Prosthetics
Effective date: March 6, 2008
Proposal publication date: October 12, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

28 TAC §§5.9001, 5.9002, 5.9004

The Commissioner of Insurance adopts amendments to §§5.9001, 5.9002, and 5.9004, concerning the Amusement Ride Safety Inspection and Insurance Act, Occupations Code §§2151.001 - 2151.153. The amendments are adopted without changes to the proposed text published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8667).

REASONED JUSTIFICATION. The adopted amendments are necessary to implement HB 1070, enacted by the 80th Legislature, Regular Session, effective June 15, 2007. Prior to the enactment of HB 1070, there were only two classes of amusement rides regulated under the Occupations Code: Class A rides primarily for children under thirteen at a fixed location, and Class B rides defined as all amusement rides other than Class A rides. This meant that low-risk Class B amusement rides were regulated for purposes of liability insurance in the same class as

higher risk rides, like roller coasters. Thus, the owners and operators of low-risk Class B rides were required to purchase the same high-cost insurance coverage as owners and operators of the high-speed or high-risk amusement rides.

HB 1070 establishes new minimum liability insurance requirements for a certain defined Class B amusement ride that operates similar to a five-mile-an-hour train and authorizes a local government to obtain liability insurance required under existing §2151.101 or under new §2151.1011 of the Occupations Code through an interlocal agreement. Specifically, HB 1070 amends the Occupations Code §2151.101(a) to exclude a Class B amusement ride that meets the definition in new §2151.1011 from the §2151.101 minimum insurance requirements. The §2151.101 minimum insurance requirements for a Class B amusement ride are that an owner/operator must maintain a liability insurance policy for each ride in the amount of not less than $1,000,000 bodily injury and $500,000 property damage per occurrence or not less than $1,500,000 per occurrence combined single limit. New §2151.1011 requires certain defined Class B amusement rides to obtain liability insurance in the amount of not less than $1 million in aggregate for all liability claims occurring in a policy year. New §2151.101 only applies to a Class B amusement ride that consists of a motorized vehicle that tows one or more separate non-rotating passenger cars in a manner similar to a train but without regard to whether the vehicle and cars operate on a fixed course, as long as the vehicle does not run on an elevated track, nor travel under its own power more than five miles per hour, has safety belts for all passengers, and passenger seating areas enclosed by guardrails or doors. HB 1070 also adds subsection (c) to the Occupations Code §2151.101 to provide that a local government may meet the §2151.101 insurance requirements for amusement rides through an interlocal agreement. New §2151.1011 also authorizes a local government to satisfy the new §2151.1011 insurance requirements for a Class B motorized train amusement ride by obtaining liability coverage through an interlocal agreement.

The adopted amendments to §5.9001(4) and (5) are necessary to update an obsolete statutory citation. The Insurance Code Article 1.14-2, referenced in both paragraphs, was re-adopted without substantive change as Chapter 981 in the nonsubstantive Insurance Code revision, Acts 2001, 77th Legislature, Chapter 1419, §1, effective June 1, 2003.

Adopted amendments to §5.9002 are necessary to add three new definitions: Class B motorized train amusement ride, interlocal agreement, and local government. In new §5.9002(6), a Class B motorized train amusement ride is defined as a Class B amusement ride that consists of a motorized vehicle that tows one or more separate passenger cars in a manner similar to a train but without regard to whether the vehicle and cars operate on a fixed track or course, does not travel under its own power in excess of five miles per hour, has safety belts for all passengers, does not run on an elevated track, has passenger seating areas enclosed by guardrails or doors, and does not have passenger cars that rotate independently from the motorized vehicle. This definition conforms to the definition enacted in the Occupations Code §2151.1011 for rides that qualify for the exemption from the insurance requirements of the Occupations Code §2151.101 for Class B amusement rides. Existing §5.9002(6) - §5.9002(8) are renumbered because of the addition of the new definition. In adopted new §5.9002(10), the definition for an interlocal agreement references the definition for interlocal contract in the Government Code §791.003(2), which is defined as a contract or agreement under the Government Code, Chapter 791, the Texas Interlocal Cooperation Act. In new §5.9002(11), the term local government is defined consistent with the Texas Interlocal Cooperation Act, Government Code §791.003(4). The remaining definitions in §5.9002 are renumbered because of the addition of the two new definitions.

Adopted §5.9004 re-formats the rule structure for purposes of clarity in amending the existing rule to include the HB 1070 amendments. The re-formatting of the rule structure results in designation of existing paragraphs as subsections, existing subparagraphs as paragraphs, and existing clauses as subparagraphs. Minor, non-substantive amendments are proposed for purposes of organization and readability, including the addition of subheadings. Punctuation has been changed where necessary. Other minor, nonsubstantive amendments include: (i) revision of citations to the Insurance Code to conform to agency style; (ii) correction of verb tense; (iii) correction of errors and inconsistency in capitalization; and (iv) correction of internal cross-references. None of the re-formatting or editorial revisions results in any substantive change to §5.9004.

In redesignated §5.9004(b)(1), language relating to "insuring the owner or operator against liability for injury to persons arising out of use of the amusement ride" is deleted for purposes of accuracy and clarity. In redesignated §5.9004(d)(2)(A), language relating to "for injury to persons" is deleted for the same purposes.

New §5.9004(b)(1)(B) exempts a Class B motorized train amusement ride from the Occupations Code §2151.101 insurance requirements for a Class B amusement ride. New §5.9004(b)(2) is necessary to require, consistent with new §2151.1011 of the Occupations Code, that a Class B motorized train amusement ride maintain liability insurance of not less than $1 million in aggregate for all liability claims occurring in a policy year.

New §5.9004(b)(3) provides that a local government that owns or operates an amusement ride may satisfy the prescribed insurance requirements through an interlocal agreement. This paragraph is added to implement the Occupations Code §§2151.101(c) and 2151.1011(c) enacted by HB 1070.

Redesignated §5.9004(d) governs the yearly renewal of the inspection certificate for an amusement ride. Under the existing rules, in the process of renewing an inspection certificate for an amusement ride, an owner or operator must show proof of continuing liability insurance for the ride. This requirement may be satisfied by the submission of a certificate of insurance reflecting insurance in the required amount for the particular classification of the ride. The necessary amount of insurance to be shown on the certificate is specified in redesignated §5.9004(d)(2)(A)(i) and (ii). Therefore, new §5.9004(d)(2)(A)(iii) is added to include the new §2151.1011 liability insurance requirements for Class B motorized train amusement rides.

HOW THE SECTIONS WILL FUNCTION. The amendments to §5.9001 are non-substantive, and the purpose of the subchapter remains to aid in the implementation of the Amusement Ride Safety Inspection and Insurance Act. The scope of the subchapter remains as provided in paragraphs (1) - (7) of §5.9001.

Amendments to §5.9002 add three new definitions necessary for implementing the legislative amendments to the Occupations Code §§2151.001 - 2151.153: Class B motorized train amusement ride, interlocal agreement, and local government. All existing definitions of §5.9002 are retained, but paragraphs (6) - (11) are renumbered because of the addition of the three new defini-

tions. In new §5.9002(6), a Class B motorized train amusement ride is defined as a Class B amusement ride that consists of a motorized vehicle that tows one or more separate passenger cars in a manner similar to a train but without regard to whether the vehicle and cars operate on a fixed track or course, does not travel under its own power in excess of five miles per hour, has safety belts for all passengers, does not run on an elevated track, has passenger seating areas enclosed by guardrails or doors, and does not have passenger cars that rotate independently from the motorized vehicle.

New §5.9002(10) defines an interlocal agreement as a contract or agreement under the Government Code, Chapter 791, the Texas Interlocal Cooperation Act.

In new §5.9002(11), the term local government is defined as a county, municipality, or special district; a junior college district, or other political subdivision of this state or another state; a local government corporation created under Transportation Code Subchapter D, Chapter 431; a political subdivision corporation created under the Local Government Code Chapter 304; a local workforce development board created under the Government Code §2308.253; or a combination of two or more of such entities, consistent with the Texas Interlocal Cooperation Act, Government Code §791.003(4).

Section 5.9004 is re-formatted for purposes of clarity in amending the existing rule to include the HB 1070 amendments. The re-formatting of the rule structure results in designation of existing paragraphs as subsections, existing subparagraphs as paragraphs, and existing clauses as subparagraphs. None of the re-formatting results in any substantive change to §5.9004.

New §5.9004(b)(1)(B) exempts a Class B motorized train amusement ride from the Occupations Code §2151.101 insurance requirements for a Class B amusement ride. New §5.9004(b)(2) requires that a Class B motorized train amusement ride maintain liability insurance of not less than $1 million in aggregate for all liability claims occurring in a policy year.

New §5.9004(b)(3) provides that a local government that owns or operates an amusement ride may satisfy the prescribed insurance requirements through an interlocal agreement.

Redesignated §5.9004(d)(2)(A)(i) and (ii) specify the necessary amount of liability insurance to be shown on the certificate submitted to the Department for the yearly renewal of the inspection certificate for Class A and Class B amusement rides. New §5.9004(d)(2)(A)(iii) specifies the necessary amount of liability insurance to be shown on the certificate submitted to the Department for the yearly renewal of the inspection certificate for a Class B motorized train amusement ride.

SUMMARY OF COMMENTS. The Department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §§2151.101, 2151.1011, and 2151.051, and the Insurance Code §36.001. The Occupations Code §2151.101 exempts a Class B amusement ride that meets the definition in the Occupations Code §2151.1011 from the §2151.101 minimum insurance requirements for Class B amusement rides. The Occupations Code §2151.1011 establishes new minimum liability insurance requirements for a certain statutorily defined Class B amusement ride that operates similar to a five-mile-an-hour train. The Occupations Code §§2151.101 and 2151.1011 authorize a local government to satisfy liability insurance requirements for amusement rides through interlocal agreements. The Occupations Code §2151.051 provides that the Commissioner of Insurance shall administer and enforce Chapter 2151 of the Occupations Code. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 15, 2008.

TRD-200800969
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: March 6, 2008
Proposal publication date: November 30, 2007
For further information, please call: (512) 463-6327

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas Workforce Investment Council

Title 40, Part 22

TRD-200800918
Filed: February 14, 2008

♦ ♦ ♦

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 91, §91.7000 (Certificates of Indebtedness) and §91.8000 (Discovery of Confidential Information) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or electronically to info@tcud.state.tx.us. The deadline for comments is March 31, 2008.

The Commission also invites your comments on how to make these rules easier to understand. For example:

* Do the rules organize the material to suit your needs? If not, how could the material be better organized?

* Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

* Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

* Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

* Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-200801010
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 19, 2008

♦ ♦ ♦

Texas Board of Physical Therapy Examiners

Title 22, Part 16

The Texas Board of Physical Therapy Examiners proposed to review the rules in the following chapters, pursuant to the Texas Government Code, §2001.039, at its April 11, 2008 meeting.

Chapter 321. Definitions.

Chapter 322. Practice.

Chapter 323. Powers and Duties of the Board.

Chapter 325. Organization of the Board.

Chapter 327. Compensation.

Chapter 329. Licensing Procedure.

Chapter 335. Professional Title.

Chapter 337. Display of License.

Chapter 339. Fees.

Chapter 341. License Renewal.

Chapter 342. Open Records.

Chapter 343. Contested Case Procedure.

Chapter 344. Administrative Fines and Penalties.

Chapter 345. Accessible Services.

Chapter 346. Practice Settings for Physical Therapy.

Chapter 347. Registration of Physical Therapy Facilities.

The Texas Board of Physical Therapy Examiners is concurrently proposing amendments to §329.5, Licensure Procedures for Foreign-Trained Applicants, as published in the March 7, 2008, issue of the *Texas Register*.

Comments on the proposed review may be submitted to Nina Hurter, PT Coordinator, 333 Guadalupe, Suite 2-510, Austin Texas 78701.

TRD-200801000

John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Filed: February 19, 2008

♦ ♦ ♦

Adopted Rule Reviews

Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board readopts without change the following rules contained in Title 22, Part 14, Chapters 277, 279 and 280 of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially adopting the rules continue to exist:

Chapter 277. Practice and Procedure

§277.1. Complaint Procedures.

§277.2. Disciplinary Proceedings.

§277.3. Probation.

§277.4. Reinstatement.

§277.5. Felony Convictions.

§277.6. Administrative Fines and Penalties.

§277.7. Patient Records.

§277.8. Emergency Temporary Suspension or Restriction.

§277.9. Alternative Dispute Resolution.

Chapter 279. Interpretations

§279.1. Contact Lens Examination.

§279.2. Contact Lens Prescriptions.

§279.3. Spectacle Examination.

§279.4. Spectacle and Ophthalmic Devices Prescriptions.

§279.5. Dispensing Ophthalmic Materials.

§279.9. Advertising.

§279.10. Professional Identification.

§279.11. Relationship with Dispensing Optician - Books and Records.

§279.12. Relationship with Dispensing Optician - Separation of Offices.

§279.13. Board Interpretation Number Thirteen.

§279.14. Patient Files.

§279.15. Board Interpretation Number Fifteen.

Chapter 280. Therapeutic Optometry

§280.1. Application for Certification.

§280.2. Required Education.

§280.3. Certified Therapeutic Optometrist Examination.

§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry.

§280.8. Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation.

§280.9. Application for Licensure as Optometric Glaucoma Specialist.

§280.10. Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medications and Anti-Glaucoma Drugs.

§280.11. Treatment of Glaucoma by an Optometric Glaucoma Specialist.

The proposed rule review was published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8563).

No comments were received.

The rule review was conducted pursuant to Texas Government Code §2001.039. This concludes the review of rules in Chapters 277, 279 and 280.

TRD-200800941
Chris Kloeris
Executive Director
Texas Optometry Board
Filed: February 15, 2008

♦ ♦ ♦

Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy adopts the review of Chapter 283 (§§283.1 - 283.11), concerning Licensing Requirements for Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8563).

No comments were received regarding the proposed rule review.

The agency finds the reason for adopting the rules continues to exist.

TRD-200800976
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: February 15, 2008

♦ ♦ ♦

The Texas State Board of Pharmacy adopts the review of Chapter 291, Subchapter B (§§291.31- 291.35), concerning Pharmacies, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules. The proposed review was published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8564).

No comments were received regarding the proposed rule review.

The agency finds the reason for adopting the rules continues to exist.

TRD-200800975
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Filed: February 15, 2008

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §84.809(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)

BUYER _____
ADDRESS _____
CITY _____ STATE____ZIP_____
PHONE _____

SELLER/CREDITOR_____
ADDRESS _____
CITY_____ STATE____ZIP_____
PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Trade-in: Year_____ Make_____ Model_____ VIN_____ License No._____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate. %	**FINANCE CHARGE** The dollar amount the credit will cost me. $	**Amount Financed** The amount of credit provided to me or on my behalf. $	**Total of Payments** The amount I will have paid after I have made all payments as scheduled. $	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____ $

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: **[True daily earnings:]** (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. **[Scheduled Installment Earnings Method or sum of the periodic balances:]** (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: **[True daily earnings method:]** If I pay all that I owe early, I will not have to pay a penalty. **[Sum of the periodic balances method:]** I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional Information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Other insurance paid to the insurance company $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and/or registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
   M. Depu ty service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]** $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____
      $_____
   Total other charges and amounts paid to others on my behalf
   $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $7.00 of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.***]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	**DATE DUE**

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. ***[Note: alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.209(12).]***

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. ***[At Creditor's Option, the following may be added:]*** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Coverage	Term in Months	Premium
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
_____	_____	☐ $_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer $_____ ☐Credit Life, both buyers $_____ Term _____
☐Credit Disability, one buyer $_____ ☐Credit Disability, both buyers $_____ Term _____

[***Optional additional sentence for balloon payment contracts:***] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. [***Optional additional language for true daily earnings method contracts:***] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____Buyer _____Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[**Regular Transaction using sum of the periodic balances method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A_2: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of $____ per $100.00.

[**True Daily Earnings Method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[**Scheduled Installment Earnings Method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If the buyer's signature is dated)** I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated)** I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated)** I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated)** I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____	_____	_____	_____
Buyer	Date	Seller	Date
_____	_____		
Co-Buyer	Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

CONSUMER CREDIT COMMISSIONER NOTICE. To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579, and can be contacted relative to any inquiries or complaints.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and Scheduled Installment Earnings Method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00.) **[Scheduled Installment Earnings Method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00.

HOW YOU WILL APPLY MY PAYMENTS [True daily earnings method:] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [True daily earnings method:] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. (Optional Language Provision: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES [True daily earnings method:] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. **[Scheduled installment earnings method or sum of the periodic balances:]** If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE **[Sum of the periodic balances method or scheduled installment earnings method:]** If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal law and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES **Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.**

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:

Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Figure: 19 TAC §21.24(b)(3)

Chart I. Eligible Nonimmigrants--Persons with Visas that Allow them to Domicile in the United States

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
A-1	Ambassadors, public ministers or career diplomats and their immediate family members	Yes
A-2	Other accredited officials or employees of foreign governments and their immediate family members	Yes
A-3	Personal attendants, servants or employees and their immediate family members of A-1 and A-2 visa holders	Yes
B-1	Temporary visitor for business	No
B-2	Temporary visitor for pleasure	No
C-1	Foreign travelers in transit through the United States	No
C-1D	Combined transit and crewmen visa	No
C-2	Person in transit to UN Headquarters under §11 (3), (4), or (5) of the Headquarter Agreement.	No
C-3	Foreign government official, members of immediate family, attendant or personal employee in transit	No
C-4	Transit without Visa. See TWOV	No
D-1	Crewmember departing on same vessel of arrival	No
D-2	Crewmember departing by means other than vessel of arrival	No
E-1	Treaty traders, spouse and children	Yes
E-2	Treaty investors, spouse and children	Yes
F-1	Academic student	No
F-2	Spouse or child of F-1	No
F-3	Academic students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the United States.	No**
G-1	Principal resident representative of recognized foreign member government to international organization, and members of immediate family.	Yes
G-2	Other accredited representatives of recognized foreign member governments to international organization and their immediate family members	Yes
G-3	Representatives of non-recognized or nonmember government to international organization, and members of immediate family	Yes

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
G-4	International organization officer or employee, and their immediate family members	Yes
G-5	Attendants, servants and personal employees of G-1, G-2, G-3 or G-4 visa holders and their immediate family members	Yes
H-1B	Specialty Occupations, DOD workers, fashion models	Yes
H-1C	Nurses going to work for up to three years in health professional shortage areas	No
H-2A	Temporary agricultural workers	No
H-2B	Temporary workers, skilled and unskilled	No
H-3	Trainee	No
H-4	Spouse or child of H-1, H-2 or H-3 visa holders	H-4 dependents of H-1B Yes; all other H-4 dependents, No
I	Visas for foreign media representatives	Yes
J-1	Visas for exchange visitors	No
J-2	Spouse or child of J-1 visa holders	No
K-1	Fiancé(e)	Yes
K-2	Minor child of K-1	Yes
K-3	Spouse of a U.S. citizen (LIFE Act)	Yes
K-4	Child of a K-3 (LIFE Act)	Yes
L1-A	Executive, managerial	Yes
L1-B	Specialized knowledge	Yes
L-2	Spouse or child of L-1	Yes
M-1	Vocational or other nonacademic students, other than language students	No
M-2	Immediate families of M-1 visa holders	No
M-3	Vocational students who are Canadian or Mexican citizens, who commute across the border to study full-time or part-time in the U.S.	No**
N-8	Parent of alien classified as SK-3 "Special Immigrant"	Yes
N-9	Child of N-8, SK-1, SK-2, or SK-4 "Special Immigrant"	Yes

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
NATO 1	Principal Permanent Representative of Member State to NATO and resident members of official staff or immediate family	Yes
NATO 2	Other representatives of Member State; Dependents of Member of a Force entering in accordance with the provisions of NATO Status-of-Forces agreement; Members of such a Force if issued visas	Yes
NATO 3	Official clerical staff accompanying Representative of Member State to NATO or immediate member	Yes
NATO 4	Official of NATO other than those qualified as NATO-1 and immediate family	Yes
NATO 5	Expert other than NATO officials qualified under NATO-4, employed on behalf of NATO and immediate family	Yes
NATO 6	Members of civilian component who is either accompanying a Force entering in accordance with the provisions of the NATO Status-of-Forces agreement; attached to an Allied headquarters under the protocol on the Status of International Military headquarters set up pursuant to the North Atlantic Treaty; and their dependents	Yes
NATO 7	Attendants, servants or personal employees of NATO-1, NATO-2, NATO-3, NATO-4, NATO-5 or NATO-6, or immediate	Yes
O-1	Extraordinary ability in the sciences, arts, education, business, athletics	Yes
O-2	Essential support staff of 0-1 visa holders	No
O-3	Immediate family members of 0-1 and O-2 visa holders	O-3 dependents of O-1 holders Yes; O-3 dependents of O-2 holders, No
P-1	Individual or team athletes	No
P-2	Artists and entertainers in reciprocal exchange programs	No
P-3	Artists and entertainers in culturally unique programs	No
P-4	Spouse or child of P-1, P-2 and P-3.	No
Q-1	International cultural-exchange visitors	No
Q-2	Irish Peace Process Cultural and Training Program (Walsh Visas)	No

Visa Type	Nonimmigrant (Temporary) Visa Categories	Eligible to Domicile in the United States?
Q-3	Spouse or child of Q-2	No
R-1	Religious workers	Yes
R-2	Spouse or child of R-1	Yes
S-5	Informant of criminal organization information	No
S-6	Informant of terrorism information	No
T-1	Victim of a severe form of trafficking in persons	Yes
T-2	Spouse of a T-1	Yes
T-3	Child of a T-1	Yes
T-4	Parent of a T-1 visa holder (if the child is under 21 years of age)	Yes
TC	No longer issued. TN issued in its place.	No
TD	Spouse or child accompanying TN	
TN	Trade visas for Canadians and Mexicans in NAFTA	No
TPS	Temporary Protected Status	Yes
TWOV	Passenger or Crew	No
U-1	Victim of certain criminal activity	Yes
U-2	Spouse of a U-1	Yes
U-3	Child of a U-1	Yes
U-4	Parent of a U-1 visa holder (if the child is under 21 years of age).	Yes
V-1	Spouse of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years	Yes
V-2	Child of Legal Permanent Resident (LPR) who is the principal beneficiary of a family-based petition (I-130) which was filed prior to December 21, 2000, and has been pending for at least three years	Yes
V-3	**Derivative child of a V-1 or V-2 visa holder**	Yes

** Please note: These international, commuting students may be eligible for a waiver of nonresident tuition under Texas Education Code §54.060(b).

Figure: 19 TAC §21.25(b)

Chart III
Documentation to Support Domicile and Residency

The following documentation may be requested by the institution in order to resolve issues raised by responses to the Core Residency Questions. The listed documents may be used to establish that the person is domiciled in Texas and has maintained a residence in Texas continuously for 12 months prior to the census date.

Part A **Documentation that can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months**
1. An employer's statement of dates of employment (beginning and current or ending dates) that encompass at least 12 months. Other documents that show the person has been engaged in activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home) may also be used as well as documents that show the person is self-employed, employed as a homemaker, or is living off his/her earnings, or through public assistance. Student employment, such as work-study, the receipt of stipends, fellowships or research or teaching assistanceships does not qualify as a basis for establishing a domicile. 2. For a homeless person, written statements from the office of one or more social service agencies located in Texas that attests to the provision of services to the homeless person for the 12 months prior to the census date of the term in which the person enrolls.

Part B **Documentation, which (if accomplished and maintained for the 12 months prior to the census date of the term in which the person enrolls and if accompanied by at least ONE type of document listed in Part C), can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months**
1. Title to real property in Texas 2. Marriage Certificate with documentation to support that spouse is a domiciliary of Texas 3. Ownership of business in Texas with documents that evidence the organization or the business as a partnership or corporation and reflect the ownership interest of the person or dependent's parent. 4. State of local licenses to conduct a business or practice a profession in this state.

Part C **Documents that May be Used to Demonstrate Maintenance of a Residence for 12 Months** **These documents do not show the establishment of a domicile. They only support a person's claim to have resided in the state for at least 12 months. Activities in Part A and B of this Chart may be used to establish a domicile.**
1. Utility bills for the 12 months preceding the census date; 2. A Texas high school transcript for full senior year preceding the census date; 3. A transcript from a Texas institution showing presence in the state for the 12 months preceding the census date; 4. A Texas driver's license or Texas ID card with an expiration date of not more than four years; 5. Cancelled checks that reflect a Texas residence for the 12 months preceding the census date; 6. A current credit report that documents the length and place of residence of the person or the dependent's parent. 7. Texas voter registration card that has not expired. 8. Pay stubs for the 12 months preceding the census date; 9. Bank statements reflecting a Texas address for the 12 months preceding the census date; 10. Ownership of real property with copies of utility bills for the 12 months preceding the census date. 11. Registration or verification from licensor, showing Texas address for licensee; 12. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 months preceding the census date. 13. Lease or rental of real property, other than campus housing, in the name of the person or the dependent's parent for the 12 months preceding the census date.

Figure: 19 TAC §21.25(c)

Chart II

AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF _____ §

Before me, the undersigned Notary Public, on this day personally appeared _____, known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is _____. I am ___ years of age and have personal knowledge of the facts stated herein and they are all true and correct.

2. I graduated or will graduate from a Texas high school or received my GED certificate in Texas.

3. I resided in Texas for three years leading up to graduation from high school or receiving my GED certificate.

4. I have resided or will have resided in Texas for the 12 months prior the census date of the semester in which I will enroll in _____ (college/university).

5. I have filed or will file an application to become a permanent resident at the earliest opportunity that I am eligible to do so.

In witness whereof, this _____day of _____, _____.

_____
(Signature)

_____
(Printed Name)

_____
(Student I.D.#)

SUBCRIBED TO AND SWORN TO BEFORE ME, on the _____ day of _____, _____, to certify which witness my hand and official seal.

_____
Notary Public in and for the State of Texas

Figure: 30 TAC §230.1(c)(2)

TRANSMITTAL OF DATA

Use of this form: If required by a municipal authority pursuant to Texas Local Government Code, §212.0101, or a county authority pursuant to Texas Local Government Code, §232.0032 the plat applicant shall use this form to attest that information has been provided in accordance with the requirements of 30 TAC Chapter 230. This form shall be provided to the municipal or county authority, the executive administrator of the Texas Water Development Board, and the applicable groundwater conservation district or districts.

Name of Proposed Subdivision: _____

Property Owner's Name(s): _____

Address: _____

Phone: _____

Fax: _____

Plat Applicant's Name: _____

Address: _____

Phone: _____

Fax: _____

I, _____, the Plat Applicant, attest that the following information has been provided in accordance with 30 TAC Chapter 230.

Has the Certification of Groundwater Availability for Platting Form (Figure: 30 TAC §230.3(c)) been provided to the:	(Please Circle One)	
1. Municipal or County authority?	Yes	No
2. Executive administrator of the Texas Water Development Board?	Yes	No
3. Applicable Groundwater Conservation District or Districts?	Yes	No
Name of Groundwater Conservation District or Districts:		
Have copies of the information, estimates, data, calculations, determinations, and statements been provided to the:		
4. Executive administrator of the Texas Water Development Board?	Yes	No
5. Applicable Groundwater Conservation District or Districts?	Yes	No
Name of Groundwater Conservation District or Districts:		

Note: Mail the required information to the executive administrator of the Texas Water Development Board at the following address:

Executive Administrator
Texas Water Development Board
Groundwater Resources Division
P.O. Box 13231
Austin, Texas 78711-3231

Contact and other information for the Groundwater Conservation Districts within the state may be accessed on the following Internet pages:

http://www.tceq.state.tx.us/permitting/water_supply/groundwater/districts.html
http://www.twdb.state.tx.us/GwRD/pages/gwrdindex.html
http://www.texasgroundwater.org/index.htm

Figure: 30 TAC §230.3(c)

CERTIFICATION OF GROUNDWATER AVAILABILITY FOR PLATTING FORM

Use of this form: If required by a municipal authority pursuant to Texas Local Government Code, §212.0101, or a county authority pursuant to §232.0032, Texas Local Government Code, the plat applicant and the Texas licensed professional engineer or Texas licensed professional geoscientist shall use this form based upon the requirements of Title 30, TAC, Chapter 230 to certify that adequate groundwater is available under the land to be subdivided (if the source of water for the subdivision is groundwater under the subdivision) for any subdivision subject to platting under Texas Local Government Code, §212.004 and §232.001.The form and Chapter 230 do not replace state requirements applicable to public drinking water supply systems or the authority of counties or groundwater conservation districts under either Texas Water Code, §35.019 or Chapter 36.

Administrative Information (30 TAC §230.4)
1. Name of Proposed Subdivision:
2. Any Previous Name Which Identifies the Tract of Land:
3. Property Owner's Name(s):
Address:
Phone:
Fax:
4. Plat Applicant's Name:
Address:
Phone:
Fax:
5. Licensed Professional Engineer or Geoscientist:
Name:
Address:
Phone:
Fax:
Certificate Number:
6. Location and Property Description of Proposed Subdivision:
7. Tax Assessor Parcel Number(s).
Book:
Map:
Parcel:

Proposed Subdivision Information (30 TAC §230.5)		
8. Purpose of Proposed Subdivision (single family/multi-family residential, non-residential, commercial):		
9. Size of Proposed Subdivision (acres):		
10. Number of Proposed Lots:		
11. Average Size of Proposed Lots (acres):		
12. Anticipated Method of Water Distribution.		
Expansion of Existing Public Water Supply System?	Yes	No
New (Proposed) Public Water Supply System?	Yes	No
Individual Water Wells to Serve Individual Lots?	Yes	No
Combination of Methods?	Yes	No
Description (if needed):		
13. Additional Information (if required by the municipal or county authority): Note: If public water supply system is anticipated, written application for service to existing water providers within a 1/2-mile radius should be attached to this form (30 TAC §230.5(f) of this title).		

Projected Water Demand Estimate (30 TAC §230.6)
14. Residential Water Demand Estimate at Full Build Out (includes both single family and multi-family residential).
Number of Proposed Housing Units (single and multi-family):
Average Number of Persons per Housing Unit:
Gallons of Water Required per Person per Day:
Water Demand per Housing Unit per Year (acre feet/year):
Total Expected Residential Water Demand per Year (acre feet/year):
15. Non-residential Water Demand Estimate at Full Build Out.
Type(s) of Non-residential Water Uses:
Water Demand per Type per Year (acre feet/year):
16. Total Water Demand Estimate at Full Build Out (acre feet/year):
17. Sources of Information Used for Demand Estimates:

General Groundwater Resource Information (30 TAC §230.7)
18. Identify and describe, using Texas Water Development Board names, the aquifer(s) which underlies the proposed subdivision: Note: Users may refer to the most recent State Water Plan to obtain general information pertaining to the state's aquifers. The State Water Plan is available on the Texas Water Development Board's Internet website at: www.twdb.state.tx.us

Obtaining Site-Specific Groundwater Data (30 TAC §230.8)		
19. Have all known existing, abandoned, and inoperative wells within the proposed subdivision been located, identified, and shown on the plat as required under §230.8(b) of this title?	Yes	No
20. Were the geologic and groundwater resource factors identified under §230.7(b) of this title considered in planning and designing the aquifer test required under §230.8(c) of this title?	Yes	No
21. Have test and observation wells been located, drilled, logged, completed, developed, and shown on the plat as required by §230.8(c)(1) - (4) of this title?	Yes	No
22. Have all reasonable precautions been taken to ensure that contaminants do not reach the subsurface environment and that undesirable groundwater has been confined to the zone(s) of origin (§230.8(c)(5) of this title)?	Yes	No
23. Has an aquifer test been conducted which meets the requirements of §230.8(c)(1) and (6) of this title?	Yes	No
24. Were existing wells or previous aquifer test data used?	Yes	No
25. If yes, did they meet the requirements of §230.8(c)(7) of this title?	Yes	No
26. Were additional observation wells or aquifer testing utilized?	Yes	No
Note: If expansion of an existing public water supply system or a new public water supply system is the anticipated method of water distribution for the proposed subdivision, site-specific groundwater data shall be developed under the requirements of 30 TAC, Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) and the applicable information and correspondence developed in meeting those requirements shall be attached to this form pursuant to §230.8(a) of this title.		

Determination of Groundwater Quality (30 TAC §230.9)		
27. Have water quality samples been collected as required by §230.9 of this title?	Yes	No
28. Has a water quality analysis been performed which meets the requirements of §230.9 of this title?	Yes	No

Determination of Groundwater Availability (30 TAC §230.10)		
29. Have the aquifer parameters required by §230.10(c) of this title been determined?	Yes	No
30. If so, provide the aquifer parameters as determined.		
Rate of yield and drawdown:		
Specific capacity:		
Efficiency of the pumped well:		
Transmissivity:		
Coefficient of storage:		
Hydraulic conductivity:		
Were any recharge or barrier boundaries detected?	Yes	No
If yes, please describe:		
Thickness of aquifer(s):		
31. Have time-drawdown determinations been calculated as required under §230.10(d)(1) of this title?	Yes	No
32. Have distance-drawdown determinations been calculated as required under §230.10(d)(2) of this title?	Yes	No
33. Have well interference determinations been made as required under §230.10(d)(3) of this title?	Yes	No
34. Has the anticipated method of water delivery, the annual groundwater demand estimates at full build out, and geologic and groundwater information been taken into account in making these determinations?	Yes	No
35. Has the water quality analysis required under §230.9 of this title been compared to primary and secondary public drinking water standards as required under §230.10(e) of this title?	Yes	No
Does the concentration of any analyzed constituent exceed the standards?	Yes	No
If yes, please list the constituent(s) and concentration measure(s) which exceed standards:		

Groundwater Availability and Usability Statements (30 TAC §230.11(a) and (b))
36. Drawdown of the aquifer at the pumped well(s) is estimated to be _____ feet over a 10-year period and _____ feet over a 30-year period.
37. Drawdown of the aquifer at the property boundary is estimated to be _____ feet over a 10-year period and _____ feet over a 30-year period.
38. The distance from the pumped well(s) to the outer edges of the cone(s)-of-depression is estimated to be _____ feet over a 10-year period and _____ feet over a 30-year period.
39. The recommended minimum spacing limit between wells is _____ feet with a recommended well yield of _____ gallons per minute per well.
40. Available groundwater is / is not (circle one) of sufficient quality to meet the intended use of the platted subdivision.
41. The groundwater availability determination does not consider the following conditions (identify any assumptions or uncertainties that are inherent in the groundwater availability determination):

Certification of Groundwater Availability (30 TAC §230.11(c)) Must be signed by a Texas Licensed Professional Engineer or a Texas Licensed Professional Geoscientist.
42. I, _____, Texas Licensed Professional Engineer or Texas Licensed Professional Geoscientist (circle which applies), certificate number _____, based on best professional judgment, current groundwater conditions, and the information developed and presented in this form, certify that adequate groundwater is available from the underlying aquifer(s) to supply the anticipated use of the proposed subdivision.
Date: (affix seal)

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Comment

Notice is hereby given of the creation of the Texas Foundations Fund. Funds from the program will be used to provide Grants to non-profit organizations and rural government entities for the costs associated with the construction, rehabilitation, or repair of single family homes or the provision of supportive housing.

Draft Guidelines for the Texas Foundations Fund are now available for public comment and may be found on the Corporation's website at www.tsahc.org. The public comment period for the Draft Guidelines of the Corporation's Texas Foundations Fund will end March 6, 2008.

Written comment may be sent to Katherine Closmann, Executive Vice President, 1005 Congress Ave, Suite 500, Austin, Texas 78701 or by email to kclosmann@tsahc.org.

TRD-200801022
David Long
President
Texas State Affordable Housing Corporation
Filed: February 20, 2008

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Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:15 p.m. on March 17, 2008 at 1005 Congress Avenue, Suite 500 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to (i) its professional educators home loan program (the "Professional Educators Project") and (ii) its fire fighter, law enforcement or security officer, and emergency medical services personnel home loan program (the "Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Project"). The maximum aggregate face amount of the Bonds to be issued with respect to the Professional Educators Project is based on the amount of the state ceiling reserved for qualified mortgage revenue bonds pursuant to Section 1372.0221, Texas Government Code, as amended, and calculated for 2008 to be $30,721,909.18. The maximum aggregate face amount of the Bonds to be issued with respect to the Fire Fighter, Law Enforcement or Security Officer, and Emergency Medical Services Personnel Project is based on the amount of the state ceiling reserved for qualified mortgage revenue bonds pursuant to Section 1372.0222, Texas Government Code, as amended, and calculated for 2008 to be $26,601,590.98. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Professional Educators Project and the Fire Fighter, Law Enforcement or Security Officer and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at dlong@tsahc.org.

TRD-200801007
David Long
President
Texas State Affordable Housing Corporation
Filed: February 19, 2008

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Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on March 17, 2008 at 1005 Congress Avenue, Suite 500 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to (i) its professional educators home loan program, (ii) its fire fighter, law enforcement or security officer, and emergency medical services personnel home loan program and (iii) its low income home loan program (the "Projects"). The maximum aggregate face amount of the Bonds to be issued with respect to the Projects is $125,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Projects and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Ross, ADA Responsible Employee, at 1-888-

638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at dlong@tsahc.org.

TRD-200801008
David Long
President
Texas State Affordable Housing Corporation
Filed: February 19, 2008

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Office of the Attorney General

Access and Visitation Grant Request for Applications

The Federal Office of Child Support Enforcement Strategic Plan for 2005-2009 Vision Statement and Guiding Principles emphasize the importance of parents providing both financial ***and emotional*** support to their children. The Office of the Attorney General (OAG) Child Support Division echoes this same philosophical approach and highlights our support for the emotional connection between parents and their children through the OAG Access and Visitation Program.

Under 42 U.S.C. 669b, the Federal Government provides to states grants for Access and Visitation (A&V) programs. These grants may be used to establish and administer programs to support and facilitate noncustodial parents' access to and visitation with their children. Eligible activities include:

mediation,

counseling,

education,

development of parenting plans,

visitation enforcement (including monitoring, supervision and neutral drop-off and pick-up), and

development of guidelines for visitation and alternative custody arrangements.

Projects funded under this program do not have to be statewide. Entities eligible for funding include: courts; local government or other public entities; and private nonprofit organizations with a minimum of two years operating history. Matching funds (cash or in-kind) of at least 10% are required.

State funds or other funding may be used to expand the federal Access and Visitation Program.

Local A&V Programs:

Preference will be given to those proposals emphasizing Texas' priorities for the A&V grant: early intervention; co-parenting education; alternative dispute resolution services; and visitation enforcement programs offering parents with cases in the IV-D child support program legal assistance in achieving compliance with possession orders. These priorities include a target population of fragile families. A fragile family consists of low-income, unmarried parents who share a child, and are at high risk of family dissolution. Applicants are encouraged to specifically address the particular issues of never-married couples. Approximately 65% of the OAG caseload includes parents who were not married at the birth of their child. The Access and Visitation Program emphasizes co-parenting education; social services; and mediation services for never-married noncustodial parents and former partners with child support cases in the IV-D agency (OAG). Applicants should define how their proposals will serve populations not normally served. Proposals must include methodology that will be used to report outcomes of proposed services on noncustodial parenting time.

Funding Terms

Grant funds for State Fiscal Year 2009 will be from September 1, 2008 to August 31, 2009. Grant funds for State Fiscal Year 2010 will be from September 1, 2009 to August 31, 2010. Grantees successfully performing program services may be eligible for an extension of funding through State Fiscal Year 2010, based on availability of funds. It is expected that approximately 10 grants ranging from $14,000 to $80,000 will be awarded.

Statewide Toll-Free Telephone Hotline Project

In addition, the OAG is inviting proposals for one project to provide a statewide, toll-free, telephone hotline providing legal information on access and visitation, custody, paternity establishment, and child support as well as legal resources for parents, and a Web site with shared parenting information and legal resources. Hotline project applicants will need to demonstrate the ability to provide brief legal services to approximately 1,800 parent calls per month; provide paper and electronic copies of legal resources to callers; host an internet Web site that provides parents with comprehensive access, visitation, custody, paternity and child support information; provide accurate and appropriate referrals to local providers of access and visitation, mediation, and legal services; and adequately track customer satisfaction with hotline and Web-based services. Services would include a basic explanation/interpretation of court-order language in parent-friendly language to callers.

Funding Terms

Grant funds for State Fiscal Year 2009 will be from September 1, 2008 to August 31, 2009. Grant funds for State Fiscal Year 2010 will be from September 1, 2009 to August 31, 2010. Grantees successfully performing program services may be eligible for an extension of funding through State Fiscal Year 2010, based on availability of funds. **Funding levels for the Statewide Toll-Free Telephone Hotline Project will be at the OAG's discretion. This project may be extended beyond the two-year grant cycle by agreement of all parties.**

Due Date

The application deadline for submission for both the local and statewide programs is April 11, 2008. Applications and/or Attachments received after the deadline will not be considered.

Applications may be submitted one of two ways:

1. By Federal Express or by United Parcel Service (UPS) to:

Office of the Attorney General

Family Initiatives, Child Support Division

5500 E. Oltorf Street, MC 039

Austin, TX 78741

The Office of the Attorney General CANNOT accept United States Postal Service deliveries.

2. By e-mail to:

OFI.Grants@cs.state.tx.us; cc: anita.stuckey@cs.oag.state.tx.us

E-mail application as a:

read-only file (with electronic signature); **or** single PDF file.

Include all Attachments (Fiscal Year 2009 and Fiscal Year 2010 budgets and Performance Indicators; letter of cooperation with the local child support office (not applicable for Hotline applications); support

letters; etc.). **Contact** *the office manager at your local child support office* (Regional Office Manager if you serve many counties) for the letter of cooperation.

Print out your sent e-mail and retain for your files. This is proof of timely submission in the event of server problems.

A letter of intent must be submitted on the Texas OAG Web site (www.oag.state.tx.us). Once submitted, a complete application packet may be downloaded.

E-mail questions about this application process by **April 4, 2008**, to:

Anita Stuckey

anita.stuckey@cs.oag.state.tx.us

Check the Frequently Asked Questions section on the OAG Web site for answers within two (2) business days.

For more information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200800993
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 19, 2008

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Agreed Final Judgment

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Harris County, Texas and the State of Texas v. 5510 Acorn, L.L.C.*; No. 2005-08433; in the 295th Judicial District, Harris County, Texas.

Nature of Suit: This suit concerns the wastewater treatment plant located at 5510 Gaston, approximately 2,800 feet southwest of the intersection of Mount Houston Road and Hirsch Road in Harris County. 5510 Acorn, L.L.C. (5510 Acorn), is the owner and operator of the plant. Harris County filed this suit alleging that 5510 Acorn violated the discharge limitations contained in its permit on numerous occasions.

Proposed Agreed Judgment: The proposed Agreed Final Judgment and Permanent Injunction settles all of the claims in the suit. The Agreed Final Judgment requires 5510 Acorn to pay $15,000.00 in civil penalties and $10,000.00 in attorney's fees. The proposed Agreed Final Judgment further permanently enjoins 5510 Acorn to comply with the Texas Water Code and related rules concerning the handling of wastewater at the facility and to close and wind up the operation of the sewage plant in accordance with all applicable laws, statutes, and regulations.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200800986
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 19, 2008

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/25/08 - 03/02/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/25/08 - 03/02/08 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/08 - 03/31/08 is 6.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 03/01/08 - 03/31/08 is 6.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200801023
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 20, 2008

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Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Texans Credit Union, Richardson, Texas to expand its field of membership. The proposal would permit persons who live, work or attend school in Grayson County, Texas, to be eligible for membership in the credit union.

An application was received from U. S. Employees Credit Union, The Woodlands, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school within a ten mile radius of the credit union's branch office located at 24909 Kuykendahl, Tomball, Texas 77375, to be eligible for membership in the credit union.

An application was received from TexasOne Community Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work or attend school in and businesses within a ten mile radius of the branch office located at 1657 S. Fry Road, Katy, Texas 77450, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200801018
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 20, 2008

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

First Service Credit Union, Houston, Texas (#1) - See *Texas Register* issue dated December 28, 2007.

First Service Credit Union, Houston, Texas (#2) - See *Texas Register* issue dated December 28, 2007.

Applications for a Merger or Consolidation - Approved

Horizon Credit Union (Portland) and Security Service Federal Credit Union (San Antonio) - See *Texas Register* issue dated August 31, 2007.

Associates Mutual Credit Union (Houston) and InvesTex Credit Union (Houston) - See *Texas Register* issue dated November 30, 2007.

Central Dallas Federal Credit Union (Dallas) and Texans Credit Union (Richardson) - See *Texas Register* issue dated December 31, 2007.

TRD-200801019
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 20, 2008

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 31, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 31, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Adexco Operating Company; DOCKET NUMBER: 2008-0119-WR-E; IDENTIFIER: RN105371868; LOCATION: Parker County, Texas; TYPE OF FACILITY: oil and gas well operator; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: $350; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2007-1734-AIR-E; IDENTIFIER: RN100233998; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.115(c), New Source Review (NSR) Permit Number 73110, Special Condition (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with permitted emissions limits; 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to timely submit an initial report for an emissions event; 30 TAC §101.201(a)(2)(H) and THSC, §382.085(b), by failing to submit a complete and accurate initial report for an emissions event; and 30 TAC §101.201(a)(2)(I) and THSC, §382.085(b), by failing to submit a complete and accurate initial report for an emissions event; PENALTY: $2,068; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: AK/HA Manufacturing, LLC; DOCKET NUMBER: 2007-1642-AIR-E; IDENTIFIER: RN100214238; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: fiberglass septic tank manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A) and (2)(B), Federal Operating Permit (FOP) Number O-02163, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: $2,675; ENFORCEMENT COORDINATOR: Sidney Wheeler, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Best Materials, Inc.; DOCKET NUMBER: 2007-1809-WQ-E; IDENTIFIER: RN104329735; LOCATION: near Iola, Robertson County, Texas; TYPE OF FACILITY: sand and gravel mining operation; RULE VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05R720, Part III, Section D(1)(c), by failing to conduct the required daily maximum effluent limitation grab sample at a minimum frequency of once a year; PENALTY: $835; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806;

REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2007-1574-AIR-E; IDENTIFIER: RN102536307; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 1176, SC 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 1,022 pounds (lbs) of ethylene and 242 lbs of nitrogen oxides; PENALTY: $6,875; ENFORCEMENT COORDINATOR: Aaron Houston, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: CCAA, L.L.C. dba BCS Stop & Go Potties; DOCKET NUMBER: 2007-1835-MSW-E; IDENTIFIER: RN105298921; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: recyclable materials collection station; RULE VIOLATED: 30 TAC §328.5(h), by failing to have an acceptable fire prevention and suppression plan; and 30 TAC §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible materials; PENALTY: $1,387; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-1514-AIR-E; IDENTIFIER: RN100209857; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: ethylene production plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), NSR Permit 21101, SC Number 8, and THSC, §382.085(b), by failing to comply with permitted emissions limits; and 30 TAC §101.201(b)(1)(G) and (H) and THSC, §382.085(b), by failing to list the compound descriptive type for an emissions event and to furnish the correct authorized emission limit on the initial and final reports; PENALTY: $16,214; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2007-1581-AIR-E; IDENTIFIER: RN100825249; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 22690, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $10,000; Supplemental Environmental Project (SEP) offset amount of $4,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Clearstream Wastewater Systems, Inc. dba Lumberton Batch Plant Facility; DOCKET NUMBER: 2008-0087-WQ-E; IDENTIFIER: RN105198444; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: concrete plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Jimmy Doan; DOCKET NUMBER: 2007-1759-PST-E; IDENTIFIER: RN101820694; LOCATION: Stamford, Jones County, Texas; TYPE OF FACILITY: property with two inactive underground storage tanks (USTs); RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(11) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-1471-AIR-E; IDENTIFIER: RN103773206; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: polyethylene manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to prevent unauthorized emissions; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Golinda Water Supply Corporation; DOCKET NUMBER: 2007-1502-PWS-E; IDENTIFIER: RN101439404; LOCATION: Golinda, Falls County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2), by failing to maintain the public water system's operating records and make them immediately available for review by agency personnel; 30 TAC §290.42(l), by failing to compile and maintain an operations manual and keep it up-to-date for operator review and reference; and 30 TAC §290.45(b)(1)(C)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute (gpm) per connection; PENALTY: $315; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Ruben Gutierrez; DOCKET NUMBER: 2008-0118-WOC-E; IDENTIFIER: RN105362834; LOCATION: Falfurrias, Brooks County, Texas; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (316) 825-3100.

(14) COMPANY: Jim Wells County; DOCKET NUMBER: 2007-1652-PST-E; IDENTIFIER: RN100535038; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: property with two inactive USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, two USTs; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees and associated late fees; PENALTY: $15,750; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (316) 825-3100.

(15) COMPANY: Kash "N" Karry, Inc. dba Magic Texaco; DOCKET NUMBER: 2008-0084-PST-E; IDENTIFIER: RN101542330; LOCATION: Southlake, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Kent Distributors, Incorporated; DOCKET NUMBER: 2007-1680-PWS-E; IDENTIFIER: RN102925633 and RN101454270; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect monthly water samples for bacteriological analysis and by failing to provide public notification of the failure to conduct monthly bacteriological sampling; PENALTY: $6,440; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404.

(17) COMPANY: City of Kosse; DOCKET NUMBER: 2007-1669-PWS-E; IDENTIFIER: RN101390599; LOCATION: Kosse, Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(7) and §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps that have a total capacity of two gpm per connection at each pressure plane; 30 TAC §290.45(f)(3), by failing to provide adequate water purchase contract; 30 TAC §290.43(c)(4), by failing to provide a properly calibrated liquid level indicator; 30 TAC §290.43(e), by failing to provide a properly constructed intruder-resistant fence; 30 TAC §290.44(h)(1), by failing to install backflow prevention assemblies or an air gap at all residences or establishments; 30 TAC §290.46(e)(3)(B) and THSC, §341.033(a), by failing to operate the system under the direct supervision of a water works operator who holds a Class "C" or higher license; 30 TAC §290.110(c)(5)(B), by failing to monitor the disinfectant residual; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.43(d)(2), by failing to provide a pressure release device for the water system's pressure tank; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence or a lockable building to protect the pressure tank; 30 TAC §290.46(t), by failing to post a legible sign that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.46(n)(2), by failing to provide an up-to-date distribution map; 30 TAC §290.46(m)(1), by failing to inspect the system's pressure tank annually; 30 TAC §290.46(f)(2) and §290.46(f)(3)(E)(iv), by failing to keep on file and make available for commission review water system records; 30 TAC §290.46(v), by failing to securely install all water system electrical wiring in compliance with a local or national electrical code; 30 TAC §290.44(d), by failing to maintain a minimum pressure of 35 lbs. per square inch (psi) throughout the distribution system; 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change or addition to the system's pressure maintenance facilities; and 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; PENALTY: $8,108; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Leedo Manufacturing Company, L.P.; DOCKET NUMBER: 2007-1517-AIR-E; IDENTIFIER: RN100542562; LOCATION: East Bernard, Wharton County, Texas; TYPE OF FACILITY: wood cabinet manufacturing; RULE VIOLATED: 30 TAC §106.433(4)(A) and (6)(A) and §122.143(4), FOP Number O-1788 General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to comply with emissions limits; 30 TAC §122.143(4) and §122.145(2)(A) and (B), FOP Number O-1788 GTC , and THSC, §382.085(b), by failing to submit complete and accurate semi-annual deviation reports; 30 TAC §116.115(c), NSR Permit Number 49158, SC 11D, NSR Permit Number 39863, SC 12D, and THSC, §382.085(b), by failing to maintain daily inspection records of all spray booth filters; and 30 TAC §101.20(2), 40 Code of Federal Regulations (CFR) §63.800(b)(2), and THSC, §382.085(b), by failing to maintain records of the 12-month rolling average of gallons used for all coatings, glues, and solvents; PENALTY: $72,049; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Leisure Pools USA Trading, Inc.; DOCKET NUMBER: 2007-1929-AIR-E; IDENTIFIER: RN100578939; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: fiberglass pool manufacturing plant; RULE VIOLATED: 30 TAC §122.121 and THSC, §382.054 and §382.085(b), by failing to obtain an FOP before becoming a major source for the hazardous air pollutant styrene; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain an NSR Permit when the respondent exceeded the 75 ton resin and gelcoat usage limit; and 30 TAC §101.20(2) and §113.1060, 40 CFR §63.9(b) and §63.5905, and THSC, §382.085(b), by failing to notify the TCEQ that the plant became an affected source under 40 CFR Part 63, Subpart WWWW, within 120 days of becoming a major source for styrene; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: City of Mart; DOCKET NUMBER: 2007-1456-PWS-E; IDENTIFIER: RN101388544; LOCATION: Mart, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a free chlorine residual of at least 0.2 milligrams per liter (mg/L); 30 TAC §290.41(e)(5), by failing to provide an intruder-resistant fence to protect the facility's raw water pumps; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence to protect the facility's elevated and ground storage tanks; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices; 30 TAC §290.43(c)(6) and §290.46(m)(4), by failing to maintain all treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.42(f)(1)(D), by failing to store dry chemicals off the floor in a dry room that is located above the ground and protected against flooding or wetting from floors, walls, and ceilings; 30 TAC §290.42(d)(2)(A), by failing to provide a vacuum breakers on each hose bibb within the plant facility; 30 TAC §290.46(t), by failing to post a legible sign that contains the name of the water supply and emergency telephone numbers; 30 TAC §290.43(c), by failing to design a proper roof slope on the ground storage tank in accordance with American Water Works Association (AWWA) standards; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.43(c)(3), by failing to maintain the overflow on the facility's storage tanks in strict accordance with current AWWA design standards; 30 TAC §290.42(d)(11)(D)(i), by failing to equip each filter with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators; 30 TAC §290.46(f)(2), by failing to provide water system records to commission personnel at the time of the investigation; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead with a gasket or sealing compound; and 30 TAC §290.46(e)(6)(B) and THSC, §341.033(a), by failing to employ an additional water works operator for surface water systems that serve more than 1,000 connections with a valid applicable license; PENALTY: $9,877; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: City of Mason; DOCKET NUMBER: 2007-1654-MSW-E; IDENTIFIER: RN102002185; LOCATION: Mason County, Texas; TYPE OF FACILITY: local government landfill; RULE VIOLATED: 30 TAC §330.371(a) and (c)(3) and Municipal Solid Waste (MSW) Permit Number 195, Landfill Gas Management Plan, by failing to prevent the concentration of methane gas from exceeding 5% by volume in monitoring points and probes; 30 TAC §330.121(b) and §330.141(a) and MSW Permit Number 195, Site Operating Plan, by failing to maintain easement and buffer zone protection; 30 TAC §330.305(c) and (g) and MSW Permit Number 195, Contaminated Water Plan, by failing to maintain a runoff management system from the active portion of the landfill; 30 TAC §330.133(f) and §330.165(a) and MSW Permit Number 195, Site Operating Plan, by failing to provide adequate daily landfill cover and repair erosion of landfill cover; 30 TAC §330.125(a) and MSW Permit Number 195, Site Oper-

ating Plan, by failing to maintain required plans at the landfill; and 30 TAC §330.503, by failing to update the facility's financial assurance; PENALTY: $11,550; Supplemental Environmental Project (SEP) offset amount of $9,240 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Household Hazardous Waste Clean-up; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(22) COMPANY: MCWANE, INC.; DOCKET NUMBER: 2007-1417-AIR-E; IDENTIFIER: RN102679867; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: iron and steel foundry; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.115(c), and 122.143(4), Air Permit Number 9425/PSD-TX-1046, SC Number 1, FOP Number O-01407, SC Number 7, and THSC, §382.085(b), by failing to adhere to the permitted maximum allowable emission rate table (MAERT) for the South Plant Cupola Baghouse limit; 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.115(c), and 122.143(4), Air Permit Number 9425/PSD-TX-1046, SC Number 1, FOP Number O-01407, SC Number 7, and THSC, §382.085(b), by failing to adhere to the permitted MAERT limit for the Vanaire Acid Scrubber; and 30 TAC §106.433(4)(C) and §122.143(4), FOP Number O-01407, SC Number 7, and THSC, §382.085(b), by failing to adhere to the permitted maximum allowable emission rate at the pattern shop; PENALTY: $23,200; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(23) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2007-1718-MWD-E; IDENTIFIER: RN102287091; LOCATION: Wood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014055001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and the Code, §26.121(a), by failing to comply with permit effluent limitations for five-day biochemical oxygen demand and dissolved oxygen; PENALTY: $4,140; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(24) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2007-1731-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit 3855B and PSD-TX-876, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 56 lbs. of vinyl chloride; PENALTY: $3,275; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Peace Partners Car Wash, L.L.C.; DOCKET NUMBER: 2007-1357-AIR-E; IDENTIFIER: RN102704095; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum reid vapor pressure requirement of seven psi absolute; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(26) COMPANY: Prairie View A & M University; DOCKET NUMBER: 2007-1696-MWD-E; IDENTIFIER: RN102078532; LOCATION: Waller County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011275002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permit effluent limits for ammonia nitrogen; PENALTY: $10,950; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Sabina Petrochemicals LLC; DOCKET NUMBER: 2007-1481-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.115(c), and 122.143(4), NSR Permit Numbers 41945, PSD-TX-950, and N-018, SC Number 1, FOP Number O-02629 GTC, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable limit for volatile organic compounds (VOCs); and 30 TAC §§101.20(3), 116.115(b)(2)(F), 116.115(c), and 122.143(4), NSR Permit Numbers 41945, PSD-TX-950, and N-018, SC Number 1, FOP Number O-02629 GTC, and THSC, §382.085(b), by failing to maintain an emission below the allowable limit for VOC; PENALTY: $24,625; Supplemental Environmental Project (SEP) offset amount of $9,850 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Smart Materials, Inc. dba Baytown Sand Pit; DOCKET NUMBER: 2008-0081-WQ-E; IDENTIFIER: RN105367767; LOCATION: near Baytown, Chambers County, Texas; TYPE OF FACILITY: sand and gravel mining; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: SMI Oil Field Services, Inc., Vallourec Industries, Inc., SC Pipe Services, Inc. dba VAM PTS Company; DOCKET NUMBER: 2007-1551-IWD-E; IDENTIFIER: RN102186194; LOCATION: Harris County, Texas; TYPE OF FACILITY: pipe and coupling threading and coating; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0003420000, Effluent Limitations and Monitoring Requirements Number 1 at Outfall Number 001 and Outfall Number 002, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for total nickel, total zinc, and total aluminum; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0003420000, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports; and 30 TAC §319.4 and TPDES Permit Number WQ0003420000, Monitoring and Reporting Requirements Number 1, by failing to monitor for each parameter included in the permit; PENALTY: $13,426; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: Tim M. Swanson; DOCKET NUMBER: 2008-0086-WOC-E; IDENTIFIER: RN105367643; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Texas Military Institute of San Antonio, Texas; DOCKET NUMBER: 2007-1890-EAQ-E; IDENTIFIER: RN104347257; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: school; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to submit and receive approval of modifications to an approved Edwards Aquifer Contributing Zone Plan; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(32) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2007-1659-AIR-E; IDENTIFIER: RN102561925; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §335.221(a)(4) and Permit HW-50379-000, Condition Number V.I.7.b.(1), by failing to annually certify the continuous emissions monitoring system; PENALTY: $6,475; Supplemental Environmental Project (SEP) offset amount of $2,590 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(33) COMPANY: City of Trinidad; DOCKET NUMBER: 2007-1629-MWD-E; IDENTIFIER: RN101609378; LOCATION: Trinidad, Henderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010467002, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for biochemical oxygen demand and total suspended solids; PENALTY: $8,520; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(34) COMPANY: City of Waco; DOCKET NUMBER: 2007-1758-PWS-E; IDENTIFIER: RN101384212; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a free chlorine residual of 0.2 mg/L or 0.5 mg/L of chloramine throughout the distribution system; PENALTY: $322; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200800988

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: February 19, 2008

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Executive Director's Response to Public Comment on TCEQ General Permit Number TXR150000

The executive director of the Texas Commission on Environmental Quality (commission or TCEQ) files this Response to Public Comment (Response) on Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR150000, the Construction General Permit for Storm Water Discharges (CGP). As required by Texas Water Code (TWC), §26.040(d) and 30 Texas Administrative Code (TAC) §205.3(e), before a general permit is issued, the executive director must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from the following persons:

American Electric Power (AEP); Associated General Contractors of Texas (AGC); Capitol Environmental; Centex Homes, represented by Thompson & Knight (Centex Homes); City of Dallas (Dallas); City of Mesquite (Mesquite); Compliance Resources Inc. (CRI); Harris County Public Infrastructure Department (Harris County); Greg Mast, Oncor Electric Delivery (Oncor); San Antonio Water System (SAWS); Save Our Springs Alliance (SOS); South Central International Erosion Control Association (SCIECA); Storm Water Solutions, LP - Houston, TX (SWS-Houston); Storm Water Solutions, LP - Royce City, TX (SWS-Royce); Stormwater Environmental Compliance Alliance, LLC (SECA); Tarrant County, represented by Robert Berndt (Tarrant County); Texas Association of Builders (TAB); Texas Department of Transportation (TxDOT); Travis County Transportation and Natural Resources (Travis County); Turner, Collie, & Braden, Inc., represented by Mary Purzer (TCB); United States Department of the Army - US Army Installation Management Command HQ, US Army Garrison, Fort Hood (Fort Hood); and Zachry Construction Corporation (Zachry).

BACKGROUND

The CGP renewal authorizes the discharge of storm water runoff associated with small and large construction sites and certain non-storm water discharges into surface water in the state. This general permit identifies the sites that may be authorized under the permit. Additionally, it identifies construction activities that may obtain waivers and that may be eligible for coverage without submitting a notice of intent (NOI). The CGP also identifies under what circumstances a construction activity must obtain individual permit coverage. The CGP also authorizes the discharge of storm water associated with industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site. Federal storm water regulations adopted by TCEQ extend storm water permitting requirements to certain construction activities, and the CGP will provide a mechanism for regulated construction activities to continue to obtain permit coverage.

On September 14, 1998, TCEQ received delegation authority from the United States Environmental Protection Agency (EPA) to administer the National Pollutant Discharge Elimination System (NPDES) program under the TPDES program. As part of that delegation, TCEQ and EPA signed a Memorandum of Agreement (MOA) that authorizes the administration of the NPDES program by TCEQ as it applies to the State of Texas. The original TPDES CGP was issued on March 5, 2003 and expires on March 5, 2008. The renewed CGP will continue to authorize discharges from construction activities in Texas for five years from the effective date of the permit.

The CGP specifies that, where discharges will reach Waters of the United States, a storm water pollution prevention plan (SWP3) must be developed and implemented unless certain conditions are met. Each SWP3 must be developed according to the minimum measures defined in the permit and must also be tailored to the specific operations and activities being conducted at the construction site. Applicants must develop SWP3s that identify and address potential sources of pollution that are reasonably expected to affect the quality of storm water discharges from the construction site. The specific requirements of the SWP3 include the following minimum provisions: a detailed project description; a description of the structural and the non-structural controls (best management practices (BMPs) that will be used to minimize pollution in runoff during construction, as well as stabilization practices during and at the completion of the activity; demonstration of compliance with other state and local plans; a description of how BMPs will be maintained and how controls may be revised; a description of how inspections of BMPs will be conducted; and identification and description of the implementation of appropriate pollution prevention measures for eligible non-storm water discharges.

The CGP is issued under the statutory authority of the TWC as follows: (1) TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission, (2) TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the

state, and (3) TWC, §26.040, which provides the commission with authority to amend rules to authorize waste discharges by general permit.

The federal storm water regulations for discharges from large construction activities are in the federal rules at 40 Code of Federal Regulations (CFR) §122.26, which were adopted by reference as amended by TCEQ at 30 TAC §281.25(a). The federal Phase II storm water regulations were published on December 8, 1999 in the *Federal Register*, requiring regulated small construction activities to obtain permit coverage by March 10, 2003. The small construction site regulations are in the federal rules at 40 CFR §122.26(a)(9)(i)(B) and (c), which were adopted by reference as amended by TCEQ at 30 TAC §281.25(a)(4).

Notice of availability and an announcement of the public meeting for this permit were published in the *Houston Chronicle*, the *Amarillo Globe-News*, the *McAllen Monitor*, the *El Paso Times*, the *San Antonio Express News*, the *Beaumont Enterprise*, the *Austin American-Statesman*, the *Stephenville Empire Tribune*, and the *Tyler Morning Telegraph* on August 27, 2007. The notice was also published in the *Dallas Morning News* on September 14, 2007 and in the *Texas Register* on August 31, 2007. A public meeting was held in Austin on October 3, 2007; and the comment period ended at the close of the public meeting.

An additional 30-day public comment period was established for the fee portion of the draft permit; and that comment period ended on October 26, 2007. Notice of the additional fee comment period was published in the *Houston Chronicle*, the *Dallas Morning News*, the *Amarillo Globe-News*, the *McAllen Monitor*, the *El Paso Times*, the *San Antonio Express News*, the *Beaumont Enterprise*, the *Austin American-Statesman*, the *Tyler Morning Telegraph*, and the *Stephenville Empire Tribune* on September 26, 2007. Notice of the additional fee comment period was published in the *Texas Register* on September 28, 2007. The additional public comment period on the changes to the fee schedule ended on October 26, 2007.

Comments and responses are organized by section, with general comments last. Some comments have resulted in changes to the permit. Those comments resulting in changes were identified in the respective responses. All other comments resulted in no changes. Due to the large number of comments received, some separate comments are combined with other related comments.

Section I.A.- Flow Chart

Comment: TAB comments that the flow chart in Section I.A. does not address common plan projects that may be less than one acre in size. TAB comments that the flow chart would be more clear if the oval icon for less than one acre were expanded and the phrase "that is not part of a larger plan of development" were added to its contents. TAB notes that the first box in the flow chart refers to page 3 of the permit, but that the requirements being referenced are actually on pages 5 and 7 of the permit. SWS-Houston comments that the flow chart references a definition on page 3 of the permit, and the definition is actually on page 4. TCB comments that the flow chart references page 3, and TCB believes that is the wrong page number. Capitol Environmental requests that the flow chart be rearranged to provide more clarification for the regulated community regarding the "larger common plan of development."

Response: TCEQ intended to show on the chart that the size thresholds were based on the size of the larger common plan of development by including specific text in the box at the top of the page. However, to clarify the intent, the box was revised to include a notation for a footnote explaining the "common plan of development or sale"; and the oval icons that included the acreage were revised to reference the footnote. The following language was included in the footnote:

To determine the size of the construction project, use the size of the entire area to be disturbed, and include the size of the larger common plan of development or sale. If the activity is part of a larger construction project, then use the size of the entire area to be disturbed for the larger project (refer to Part I.B., "Definitions," for an explanation of "larger common plan of development or sale").

Comment: Capitol Environmental states that the language in the flow chart regarding the size of projects appears to be incorrect, because the chart indicates that a construction project disturbing exactly five acres would be subject to the requirements for both large and small construction sites.

Response: In response to the comment, TCEQ changed the flow chart to indicate the differences between permitting requirements for construction projects disturbing at least one, but less than five acres, and those disturbing five or more acres (including the larger common plan of development).

Comment: TAB comments that the flow chart is not clear in referring to the types of operational control over a site and requests clarification on the different types of "operator" in order to make the flow chart as useful as is intended. Fort Hood comments that the flow chart in Section I.A. appears to have duplicate entries for the operator over plans and specifications for large construction activities and asks for clarification. In the alternative, Fort Hood asks that a correction be made to the flow chart. Mesquite comments that the clarification regarding who is an operator is more confusing, particularly for large construction sites and suggests using the language used by EPA's CGP. Harris County comments that it has a number of questions concerning the thoroughness of the flow chart on page 3 of the CGP and recommends that the flow chart be removed from the permit and incorporated into applicable TCEQ guidance documents. Fort Hood and SCIECA comment that on the flow chart provided at Section I.A., the first question related to large (> 5 acres) construction activities does not match the first question for small construction activities (> 1 acre but <5 acres) nor does the question match the definition of operator over plans and specifications in the "Definitions" section of the permit.

Response: The CGP includes specific information about when an operator must submit an NOI. To clarify what was intended in the draft CGP, the definition of "operator" was revised to include the terms "primary operator" and "secondary operator." (see discussion in later responses relating to comments received on the definition of "operator"). The flow chart was revised to incorporate the new definitions.

Comment: SCIECA comments that, if you answer "No" on the flow chart to the first path question related to projects > 5 acres, and "Yes" to the second path question, then the chart requires the preparation and implementation of an SWP3. However, SCIECA comments that it would seem that the requirement for the SWP3 would then require the operator to reassess responsibility as the person(s) that have operational control over construction plans and specifications, to the extent necessary to meet the requirements and conditions of the CGP and require the operator to file an NOI.

Response: Each operator regulated under the CGP must either develop and implement its own SWP3 or participate in a shared SWP3. For a secondary operator (see new definition of "operator"), the responsibility would be limited to items related to the construction plans and specifications, including the ability to make changes. This may include managing the hiring of contractors for the project and approving or disapproving requests to pay for additional controls.

Comment: Capitol Environmental comments that the flow chart indicates that the "owner" of a property is only subject to permit coverage for sites that disturb five or more acres.

Response: TCEQ believes that the changes to the flow chart discussed above will address the concern and notes that all "operators" of large

and small construction activities must obtain coverage under the CGP, unless they meet the requirements for obtaining a waiver.

Section I.B. - Definitions:

Comment: SAWS recommends changing the definition of "commencement of construction" because there are times where undeveloped sites will import soils to raise elevation, and the "fill" material may be brought to the site over a period of months or years. The site will remain unstabilized during this time, which allows erosion to take place. Since the site is engaged in the importation of soils and is not considered a construction site, it is not required to obtain permit coverage. To address this issue, SAWS recommends that the definition be revised as follows: "All land disturbance activities causing un-stabilized soil exposure, such as clearing, grading, excavating or importation of soils."

Response: TCEQ considers infilling of pits and similar activities to constitute construction, since the activity does result in an exposure of soils. Therefore, the SWP3 would need to include those areas in order to insure that appropriate controls are in place. Importation of soils is a construction supporting activity that also needs to be addressed in the SWP3, to insure that off-site migration of soils is minimized as required in the general permit. In order to provide additional clarification, TCEQ revised the definition of "commencement of construction" to be consistent with the existing NPDES CGP and to also include demolition in the list of examples. The new definition states:

the initial disturbance of soils associated with clearing, grading, or excavation activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition)

Comment: Dallas requests that TCEQ expand the definition of "common plan of development" to address a question related to a situation regarding commercial development. Specifically, Dallas asks whether a construction site operator would require permit coverage to build a fast food restaurant or a gas station on a small (e.g., less than one acre) area, if the proposed site was located on an existing 15-acre shopping center that is just being completed. The proposed new project would be located within the original 15-acre site, but it was not part of the original master plan of the shopping center. The shopping center was completed in phases, and all operators have either terminated coverage or are about to terminate coverage. Fort Hood asks for clarification regarding the phrase "completed in separate stages, separate phases" in the context of the definition for "common plan of development." Fort Hood asks whether there is a minimum amount of time that must pass before subsequent construction activity in the same area or in close proximity (within 1/4 mile) would not fall under this definition.

Response: Part I of the CGP defines a "common plan of development" as a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. Although a new project may not have been part of the original master plan for the shopping center, it would be considered part of the "larger common plan" due to the fact that the activity is proposed to occur in combination with other construction activities. In addition, TCEQ followed EPA Region 6 guidance regarding what constitutes a "common plan of development or sale" (see http://www.epa.gov/earth1r6/6en/w/sw/hottopcommon.htm). EPA uses a two part question to determine if an activity is no longer a common plan of development or sale. First, was the original plan, including modifications, ever substantially completed with less than one acre of the original "common plan of development or sale" remaining (e.g., <1 acre of the "common plan" was not built out at the time). If so, then answer a second question regarding whether there was a clearly identifiable period of time where there is no on-going construction, including meeting the criteria for final stabilization. If the answer to both of the questions is "yes," then it would be appropriate to consider the new project of less than one acre as a new common plan of development.

In the shopping center example, it appears that there is no clearly identifiable period of time where there was no construction activity occurring. If there is still soil disturbing activity being conducted in any of the 15-acre area outside of the new project, then that acreage would need to be added to the new project. However, if the new project was initiated after all of the soil disturbing activities at the original site were completed and there were no other retail establishments to be added, then the site would not be regulated because it comprises less than one acre.

In response to the question regarding the amount of time that must pass before a project would be considered a separate plan of development, TCEQ has not established a specific time frame, but reiterates that it must be "clearly identifiable." Therefore, if the original common plan was completed and met the conditions of final stabilization, then any new construction would be a separate common plan of development or sale.

Comment: Fort Hood asks how the definition of "common plan of development" would apply to a large land area with a single owner, such as a university, military installation, or commercial development. Fort Hood asks whether multiple projects awarded in the same general location would be considered a "common plan of development" if they were developed and awarded as separate projects, but together would total one or more acres or even five or more acres. In addition, Fort Hoods asks whether the decision would be affected by whether the individual projects were awarded to the same contractor.

Response: TCEQ attempted to provide some clarification regarding a common plan of development at an area that was under the operational control of a single entity by stating that construction projects that occurred within 1/4 mile of each other must be considered part of a larger common plan of development. This new language was included in Section II.A.2., related to construction support activities, but it is more appropriately included in the definition of "Common Plan of Development or Sale." Therefore, in response to the comment, the last paragraph of Section II.A.2. was removed and the definition of "common plan of development" was revised as follows:

Common Plan of Development - A construction activity that is completed in separate stages, separate phases, or in combination with other construction activities. A common plan of development (also known as a "common plan of development or sale") is identified by the documentation for the construction project that identifies the scope of the project, and may include plats, blueprints, marketing plans, contracts, building permits, a public notice or hearing, zoning requests, or other similar documentation and activities. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located 1/4 mile or more apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.

Comment: Centex Homes supports TCEQ adding a definition for "discharge" in Part I, Section B, to clarify that the permit only regulates discharges to surface waters and does not include discharges to ground-

water or percolation of storm water through soils. TCB comments that the definition of "discharge" seems to include things that might be considered as spills or releases of hazardous waste and does not seem to be specific to storm water. SCIECA requests clarification considering the definition of "discharge" and the definition of "outfall," and asks what specific point is considered to be the discharge location with respect to storm water exiting the site and entering a storm drainage system (i.e., is it the point where the storm water runoff enters the drainage system or the point where the storm water runoff reaches waters of the state?).

Response: For purposes of the CGP, the term "discharge" refers to the point where regulated storm water runoff reaches surface water in the state. However, the term "discharge" is not intended to be specific to storm water, as the CGP also authorizes certain non-storm water discharges. In response to the comment, the definition of "discharge" was revised as follows, consistent with EPA's existing NPDES CGP, to include additional clarification related to storm water:

Discharge - for the purposes of this permit, the drainage, release, or disposal of pollutants in storm water and certain non-storm water from areas where soil disturbing activities (e.g., clearing, grading, excavation, stockpiling of fill material, and demolition), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

Comment: Harris County requests that a definition be added for the following term: "Discharges of Storm Water Associated with Construction Support Activities."

Response: TCEQ declines to add a definition and believes that Part II.A.2. of the CGP contains an adequate description of construction support activities.

Comment: SAWS recommends adding a definition for "drought" and notes that the permit discusses this term in Section III.F.2.(b)(iii)(C), but identifies no time period and does not offer an explanation for the term. For purposes of site stabilization, SAWS comments that the definition should focus on a region's water supply status as a measure of water available for plant growth, which would allow a region to make a determination regarding what drought means in their jurisdiction. SAWS suggests the following definition: "A drought is an extended period of months or years when a region notes a deficiency in its water supply."

Response: TCEQ declines to add a definition for drought and notes that the term may vary based on factors such as location, rainfall amounts, or water supply.

Comment: Fort Hood asks whether the definition of "facility or activity" means that a single contract, including construction activities at noncontiguous sites would be considered separate activities that would be evaluated individually to determine permit applicability. Fort Hood asks whether the addition of the word "contiguous" in the definition of "facility or activity" changes the application of the common plan of development condition for multiple construction activities awarded under one contract that are not contiguous. In addition, Fort Hood asks how the condition would apply to a military installation, where there is one land owner for many thousands of acres, with dozens of simultaneous construction projects in progress, covering hundreds of acres, which may not be contiguous to each other, but are still occurring "on property" with a single land owner.

Response: The definition of "facility or activity" included in the CGP is based on TCEQ rules at 30 TAC Chapter 305, Subchapter A, and for the purposes of this permit refers to a construction site that is regulated under the CGP. The term "contiguous" refers to the relationship between structures and the land (e.g., storm water ponds, construction material piles, buildings, etc.) rather than adjacent property lines. Therefore, sites that are not adjacent to each other could still be considered a single "facility or activity" if they were part of a larger common plan of development or sale. The definition of "facility" was included to clarify that a facility as it relates to storm water, includes structures, buildings, and fixtures associated with a construction activity. The term is not meant to include land, except as it is contiguous to structures, buildings, or areas used for construction activities. For example, a "facility" would include a stockpile of fill material, but not the land underneath. If a settling pond was built at the site, then the "facility" would include the pond as well as the land, since the pond would have been built contiguous with the land. In response to the comment, the definition was revised to incorporate language from NPDES rules at 40 CFR §122.2 and EPA's CGP. The revised definition reads as follows:

Facility or Activity - for the purpose of this permit, a construction site or construction support activity that is regulated under this general permit, including all contiguous land and fixtures (e.g., ponds and materials stockpiles), structures, or appurtenances used at a construction site or industrial site described by this general permit.

Comment: TxDOT comments that, in areas experiencing drought, water use restrictions may preclude vegetative watering and that establishment of vegetation in arid and semi-arid climates is often necessarily a long-term prospect. TxDOT also comments that it may be several years after completion of construction before vegetation is established sufficiently for a Notice of Termination (NOT) to be filed. Additionally, TxDOT states that the current EPA Region 6 CGP allows the installation of temporary erosion control measures (e.g. degradable rolled erosion control products) to meet the definition of "final stabilization" in such cases. TxDOT requests that the definition include an exception or special provision for arid and semi-arid areas, and areas experiencing drought, to be consistent with the current EPA Region 6 CGP and to provide a reasonable and achievable goal in such cases.

Response: TCEQ agrees that the CGP does not provide an alternative to final stabilization for arid areas and drought-stricken areas. To address this concern, the following was added to the definition of "final stabilization." The change is consistent with the existing definition in the EPA's NPDES CGP, except that drought conditions were included as well:

(d) In arid, semi-arid, and drought-stricken areas only, all soil disturbing activities at the site have been completed and both of the following criteria have been met:

(1) Temporary erosion control measures (e.g., degradable rolled erosion control product) are selected, designed, and installed along with an appropriate seed base to provide erosion control for at least three years without active maintenance by the operator, and

(2) The temporary erosion control measures are selected, designed, and installed to achieve 70% vegetative coverage within three years.

Comment: Harris County states that the terms "native" and "background" in the definition of "final stabilization" are themselves undefined and can be interpreted in various ways. Native (historically distributed) vegetation is often neither the best vegetative alternative for stabilization nor generally desired as the final vegetative cover. Harris County requests that the term "native" be replaced with the term "generally-accepted vegetation," or an equivalent term referring to vegetation that is widely accepted and used in practice.

Response: TCEQ recognizes that the terms may be somewhat confusing; therefore, the Fact Sheet was revised to add a new Section IV.C. regarding the requirements for terminating coverage under the CGP. No changes were made to the CGP, as the language is consistent with

the existing permit and with EPA's CGP. Section IV.C. of the Fact Sheet and Executive Director's Preliminary Decision reads as follows:

C. Terminating Coverage

The general permit includes information on when and how an operator may terminate coverage under the general permit. Primary operators of large construction sites must submit a notice of termination (NOT) form. Operators of small construction sites and secondary operators of large construction sites must remove the applicable site notice. The specific requirements for terminating coverage are included in the draft permit.

An operator may terminate coverage when certain conditions are met. In establishing vegetation to achieve final stabilization, an operator is not required to utilize the same vegetation that was previously utilized at the site, provided that the stabilized area contains at least 70% coverage of the original percentage of coverage of land for the disturbed area, and provided that the operator utilizes vegetation appropriate for the area that provides acceptable coverage.

Comment: Centex Homes, CRI, Mesquite, and SCIECA comment that the change in the "operator" definition in the CGP is not clear and requests TCEQ clarify the changes. Centex requests examples of when an operator is required to submit an NOI. TAB requests that the TCEQ change the definition of "operator" so that the legal responsibilities of the new CGP are not broadened beyond the minimum requirements as stated in the EPA and current state CGP. Harris County requests that the definition of operator be amended so that a property owner (who has no control over the plans and specifications) could avoid being considered an operator and not have to submit an NOI, while the contractor or a third party (who is in charge of the plans and specifications) would be required to submit the NOI. SCIECA asks whether it is the intention of the TCEQ to allow an operator to have coverage under the CGP, but contract away his obligations under the CGP and retain no responsibilities for the SWP3 nor be held accountable for violations on their site. SCIECA suggests changing the term "operator" to "permittee" and suggested an alternative definition. SCIECA also suggests changes to subsection (b) of the operator definition by modifying it as follows:

(b) the person or persons have day-to-day operational control of specific activities in their area of construction on a site which are necessary to ensure compliance with an SWP3 for the site or other permit conditions.

Response: The change in the operator definition from the 2003 CGP in the permit was motivated by discussions between TCEQ and EPA regarding who should obtain permit coverage under the CGP. EPA's CGP defines an operator of a construction site as an entity that retains control over the construction plans and specifications, including the ability to determine how contractors are paid for construction activities. TCEQ's 2003 CGP limited the definition of operator to the person or persons who had control of the construction activities such that they could meet the requirements and conditions of the CGP. TCEQ allowed an owner or person with overall construction authority to delegate to a contractor the responsibility for all requirements under the CGP. EPA's CGP did not. To resolve this issue with EPA, the proposed TCEQ CGP that was published for comment included a revised definition for "operator" that was equivalent to the definition of "operator" in EPA's CGP. In addition, the proposed TCEQ CGP included requirements regarding when an operator of a large construction activity would not have to submit an NOI. The intent of the change was to be consistent with the definition of "operator" in EPA's CGP, while requiring an NOI to be submitted only from those entities who were required to submit an NOI under the current TCEQ CGP.

To accomplish this goal, TCEQ revised the definition of "operator" to include two subsets of regulated persons: "primary operators" and "secondary operators." The definition for "primary operator" is the same as the definition for "operator" in EPA's CGP and a "secondary operator" is one who only retains very limited operational authority with respect to the construction project. The CGP still allows an entity to delegate their responsibilities under the CGP. However, the new CGP requires an entity that retains the authority to make hiring decisions regarding project contractors or to approve/disapprove changes to the plans and specifications (a secondary operator) to obtain authorization under the CGP. A secondary operator is required to post a site notice and submit a copy of the site notice to any MS4 receiving the discharge. The secondary operator must be named in the SWP3 but is not required to submit an NOI for a large construction activity. This change also makes the secondary operator subject to TCEQ enforcement for violations of the CGP. The CGP requires both types of operators of small construction activities to obtain coverage, unless specifically waived under the general permit and does not require either type of operator to submit an NOI; but both types of operators of small construction activities must post a site notice.

As evidenced by the number of comments on this issue, TCEQ did not clearly articulate the intent of its changes in the proposed CGP. Therefore, in response to the comments, a number of changes were made to the CGP to identify the responsibilities of the secondary operator under the CGP. Changes were also made to clarify that this entity is not required to submit an NOI for a large construction activity but is required to post a site notice for both small and large construction activities and to submit a copy of the notice to any MS4 that receives the discharge from the site. Several changes for clarification of the responsibilities of operators, including primary and secondary operator responsibilities, were made in the following sections of the CGP: II.D.1. and 2.; II.D.3.; II.F.1., 3., and 4. (new); III.B.1. and 2.; and III.D.2, The definition of "operator" in the CGP was changed as follows:

Operator - The person or persons associated with a large or small construction activity that is either a primary or secondary operator as defined below:

Primary Operator - the person or persons associated with a large or small construction activity that meets either of the following two criteria:

(a) the person or persons have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

(b) the person or persons have day-to-day operational control of those activities at a construction site that are necessary to ensure compliance with a storm water pollution prevention plan (SWP3) for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

Secondary Operator - The person whose operational control is limited to the employment of other operators or to the ability to approve or disapprove changes to plans and specifications. A secondary operator is also defined as a primary operator and must comply with the permit requirements for primary operators if there are no other operators at the construction site.

Comment: Dallas requests clarification for the difference between the term "operational control over construction plans and specifications to the extent necessary to meet the requirements and conditions of the general permit" and the term "operational control over construction plans and specifications." Dallas also requests clarification of "operator" with regard to municipalities.

Response: In the previous response, TCEQ described a change to the definition that should help to clarify the difference for the commentor.

In the revised definition, the term "secondary operator" was used to clarify those operators with controls over construction plans; and specifications could be authorized under the CGP without submitting an NOI. Specifically, the definition carves out a subset of operators with control over construction plans and specifications as secondary operators; and Part II of the CGP states when an operator must file an NOI.

Comment: AGC comments that, with regard to projects performed for TxDOT by a contractor, the contractor does not meet either part (a) or (b) of the definition of "operator." Therefore, the contractor is not responsible for acquiring permit coverage for TxDOT projects. AGC notes that TxDOT maintains operational control over the plans and specifications and directs the contractor regarding all work to be performed on a project. TxDOT projects are also routinely inspected by TxDOT inspectors, who can suspend work at any time. TxDOT engineers have the sole authority to make or approve changes in the work. TxDOT also maintains the day-to-day operational control of all activities on the state-owned right-of-way that are necessary to ensure compliance with the SWP3, and TxDOT's inspectors direct the contractor on the project to carry out those activities to comply with permit requirements. The standard specifications and language in individual contracts for TxDOT projects is such that it clearly indicates that TxDOT would be the party responsible to obtain permit coverage under the definition of "operator" in the general permit. AGC understands that, in most other cases, the contractor on a given project is responsible to obtain permit coverage, but comments that TxDOT projects are unique among almost all other public and private construction projects. AGC comments that it interprets that TxDOT would be the sole operator for a TxDOT project.

Response: The identity of the operators in a TxDOT project would be determined based on the terms of the contracts and the SWP3 for each project. TCEQ recognizes that there may be cases where TxDOT (or another entity) would meet both subsection (a) and (b) of the definition of "primary operator" and would be the only entity that is required to obtain coverage under the CGP. However, if the contractor has obligations under the SWP3, then that contractor would also meet subsection (b) of the "primary operator" portion of the "operator" definition.

Comment: SCIECA notes that cities in the past have bid out the SWP3 and associated activities and asks if this exempts them from coverage under the CGP. If so, SCIECA asks whether a private developer would be allowed to do the same thing and also asks if TCEQ intends to hold the cities to a different standard than the private operators.

Response: TCEQ intends to hold both public and private entities to the same standard. The CGP does not place any restrictions on an entity's ability to contract out most of their CGP responsibilities, but the new CGP includes requirements for secondary operators who were not regulated under the current CGP. If an entity (a landowner, for example) has delegated complete control to an operator to construct for a fixed sum, without the ability to come back to the entity to request change orders or to increase or decrease the cost of the project, then the entity (the landowner in our example) would not be considered either a primary or secondary operator under the CGP.

Comment: SCIECA comments that, if the purpose of not requiring a city to file an NOI is so that the city does not have to pay the NOI filing fee, they suggest stating that municipalities or all operators of capitol improvement projects (owner or contractor) are exempt from fees, but must file an NOI if they meet the definition of operator. Cities are currently allowed exemptions for vehicle registrations, and an exemption for NOI fees would seem less confusing than what is in the current draft permit.

Response: Exempting cities from paying an NOI filing fee is not the intent of the changes to the operator requirements under the CGP. Neither private nor public entities will be required to submit an NOI or to pay the associated fee where they meet the definition of "secondary operator." In adding requirements for secondary operators, the TCEQ intends to hold the secondary operator liable for coverage and compliance under the CGP, but not require submittal of an NOI.

Comment: SCIECA asks if there is a minimum number of hours that an operator needs to be on-site to meet the day-to-day control requirement.

Response: There is no minimum or maximum number of hours that establish day-to-day operational control. If operators share the day-to-day control at the construction site "to the extent necessary to meet the requirements and conditions of this general permit," then all operators who share this responsibility meet the definition of "primary operator" and must separately meet the requirements under the CGP, including submission of an NOI, if required.

Comment: SCIECA comments that the way the permit defines day-to-day operator makes it appear that all persons on the site are required to be permitted and have some part with compliance on the site. In the past, TCEQ explained that a subcontractor with an on-site representative that is under the day-to-day control of another company is not required to obtain permit coverage. However, if a subcontractor contracts with a company that is not on-site, then the subcontractor has day-to-day control because no one from another company is there to control the day-to-day activities. SCIECA asks if this interpretation is correct.

Response: The emphasis in subsection (b) of the "primary operator" portion of the definition is whether the operator has day-to-day control "to ensure compliance with" the SWP3. If a subcontractor has no duties under the SWP3, then the subcontractor has no obligation to obtain authorization under the CGP, whether the subcontractor is supervised on-site or not.

Comment: SCIECA asks whether a third-party fee developer or construction management firm would be considered an operator, as they can direct contractors on the site, but rarely have control over plans and specifications, not usually on-site and do not seem to meet the requirements of day-to-day control.

Response: A third-party fee developer or construction management firm would meet subsection (b) of the "primary operator" portion of the revised definition if they can direct contractors at the site, such that they relate to compliance with the SWP3. Whether these entities "rarely" have control over plans and specifications are immaterial to the operator definition in the CGP. The question is, if they have the authority to do so and, if they do, they will meet the definition of operator and are regulated under the CGP.

Comment: SCIECA asks in the case of a third-party fee developer or construction management firm whether it would make a difference, regarding whether authorization under the CGP was required, if they did not handle any of the financial or contractor payments, but only acted to lend their expertise as a facilitator between the owner/developer and the contractors. SCIECA also asks in what scenario would a third-party fee developer or construction management firm be required to seek CGP coverage and participate in the SWP3. Finally, SCIECA asks, if one of these entities is involved and is required to seek coverage under the CGP, would the owner/developer still have to seek CGP coverage.

Response: Assuming under the first scenario that the entities in question do not have authority to alter the plans and specifications at the construction site and are only acting as a consultant/facilitator, they would have no permit obligations under the CGP. However, if they have responsibilities under the SWP3, then they may meet the definition of primary operator. Additionally, if they have authority to approve or disapprove changes to the plans and specifications or to hire or fire other

operators, even if they have no SWP3 responsibilities, then they are a secondary operator and must obtain authorization under the CGP.

Finally, regardless of whether the third-party fee developer or construction management firm is required to obtain authorization under the CGP, the owner/developer, in the example provided, by virtue of control over plans and specifications will, at minimum, meet the definition of secondary operator in the revised CGP. An entity who meets the definition of secondary operator in the CGP would be regulated under the permit and required to post a construction site notice, be named in the SWP3, and submit a copy of their construction site notice to an MS4 receiving the discharge, if any.

Comment: SCIECA comments that there are some municipalities that require only the erosion and sediment control contractors and owner/developers to send in NOIs, but not the primary or general contractors and asks whether this is a new procedure. SCIECA asks why an erosion control contractor would be required to seek CGP coverage and participate in the SWP3 when they create very little disturbance when they install the initial controls.

Response: Municipalities may enact through local ordinances additional requirements for those construction site activities that take place within their boundaries. However, a municipality may not alter the requirements of the CGP. Therefore, should TCEQ or EPA inspect a large construction site and, if there is a primary or general contractor who meets the definition of operator and has not submitted an NOI to TCEQ for authorization under the CGP, the contractor would be subject to TCEQ enforcement action, regardless of whether a municipal inspector would have considered this a violation of the CGP.

Comment: SCIECA asks if there is a scenario where the erosion and sediment control contractors are required by TCEQ to get permit coverage and participate in the SWP3 if they do not have control over project plans and specifications or day-to-day site activities.

Response: The purpose of the CGP is to control pollutants in construction site storm water runoff from leaving construction sites. To meet that goal, erosion and sediment controls are part of the SWP3. Whether an installer would require permit coverage would depend on whether there is another day-to-day operator at the site because the person installing the erosion controls may be working at the direction of the operator.

Comment: SCIECA comments that the CGP should include a clear definition of who is the overall permittee. The volume and turnover of trade base will make the process for permitting overly burdensome. SCIECA suggest using Occupational Safety and Health Administration (OSHA) as an example because OSHA requires individuals or individual contractors to comply with safety standards, but they are not required to obtain a permit.

Response: TCEQ declines to include a definition of who is considered the overall permittee at the construction site. Whoever is involved in the construction activity who meets the definition of operator has responsibilities under the CGP. When those entities change, the applicable permit requirements apply.

Comment: SWS comments that the new definition of operator can include any party who may deliver to or do business with the construction project, any party that may be contractually obligated to comply with the SWP3, or anyone who is paid to step foot on the construction site. Tracking down a signatory authority for all of those people could be excessively burdensome to manage a shared or group SWP3.

Response: As discussed in previous responses, the intent of subsection (b) of "primary operator" in the revised "operator" definition is unchanged from the current CGP. There is no intent for the operator definition to include everyone who sets foot on the construction site. Subsection (b) is intended to require on-site operators who have responsibilities defined in the SWP3 to submit an NOI. The revised definition for "operator" is not intended to bring in every person who may have some minor impact on project plans and specification. For example, an engineer or a consultant may recommend changing plans and specifications, but the operator in that case is the person or persons who have the actual authority to approve or make the recommended changes.

Comment: SAWS requests that the term "final stabilization" be changed to "permanent stabilization" throughout the permit. SAWS states that the term "final stabilization" is not consistent with the language used in Section III.F.2.(b) of the permit. In addition, SAWS states that, in the construction industry, the term "final stabilization" implies that an area requiring permanent stabilization should be done at the end of the project. Permanent stabilization is intended to be completed when all work is completed on the disturbed soil area.

Response: TCEQ declines to revise the definition. However, it does appear that the term "permanent stabilization" is more appropriately used in the following parts of the permit: Part I.B., related to the definition of "temporary stabilization;" the first occurrence in Section II.D.1.(c); and Section III.F.2.(c)(1)(A). Therefore, the CGP was revised to replace the term "final stabilization" with "permanent stabilization" in those sections.

Comment: Fort Hood states that the definition for "final stabilization" does not cover situations such as dirt roads or large open areas where the final desired surface consists of compacted dirt or base material and suggests including an example in this definition so that operators involved in that type of construction activity would not be in violation of the CGP even when their project is complete.

Response: If the purpose of the construction activity is to create a dirt road or parking lot, then an NOT could be submitted once the road or open area was completed, and the remaining areas of the site were appropriately vegetated. No changes were made to the permit based on the comment.

Comment: Mesquite requests that TCEQ add a definition for "hyperchlorinated water" in order to better clarify what is and is not an allowable discharge.

Response: TCEQ recognizes that discharges containing chlorine, particularly at levels over 4.0 milligrams per liter (mg/l), may cause water quality problems. Completely dechlorinated water is generally considered to contain less than 0.1 mg/l of chlorine. No specific discharge limits were established in the CGP. However, in response to the comment, the following definition for the term "hyperchlorination of waterlines," was added and is consistent with the TPDES MSGP.

Hyperchlorination of Waterlines - Treatment of potable water lines or tanks with chlorine for disinfection purposes, typically following repair or partial replacement of the waterline or tank, and subsequently flushing the contents.

Comment: Dallas requests that TCEQ add a definition of "inlet."

Response: The term occurs in two locations in the CGP: the definition of "structural control (or practice)" and in the definition of "surface water in the state." The term has a different meaning at each occurrence. For the purposes of describing an inlet as a structural control, an inlet refers to an opening for intake, such as to a storm drain. For the purpose of describing "surface water in the state," an inlet refers to a bay or recess in the shore of a sea, lake, or river; or to a narrow water passage between peninsulas or through a barrier island leading to a bay or lagoon. TCEQ declines to add a definition for "inlet" to the CGP.

Comment: SAWS recommends adding a definition for "inspector qualified person," and states that construction site inspectors should

have a basic knowledge of the CGP and various components of the SWP3, acquired through some means of formal technical training. SAWS requests the following definition of "inspector qualified person" be added:

A person conducting TPDES inspections at a construction site on behalf of the permitted operator, with a working knowledge of the TPDES General Permit for construction, understands the dynamics of a Storm Water Pollution Prevention Plan, and has attended at least one documented storm water inspector training program.

Response: TCEQ declines to add a training requirement for person conducting inspections at regulated construction sites in the CGP. However, TCEQ recognizes that several training courses exist that could aid personnel in learning useful information related to the CGP. The CGP requires that the person(s) conducting the required inspection have knowledge of the SWP3 and that the SWP3 includes the name and qualifications of the person(s) conducting the inspections. In addition, local authorities may enact ordinances or establish other controls that they believe are necessary to control pollutant discharges into their storm sewer system. In response to the comment, the CGP was revised to also require the person(s) conducting the inspections to be familiar with the CGP and with the construction site in general. The first paragraph of Section III.F.7.(a) was revised to replace the first sentence with the following two sentences:

Personnel provided by the permittee must inspect disturbed areas of the construction site that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, discharge locations, and structural controls for evidence of, or the potential for, pollutants entering the drainage system. Personnel conducting these inspections must be knowledgeable of this general permit, familiar with the construction site, and knowledgeable of the SWP3 for the site.

Comment: TxDOT requests that the definitions for "large construction activity" and "small construction activity" be revised by replacing the following phrase: "...and original purposes of a ditch, channel, or other similar storm conveyance" with the following new phrase "or original purpose of the site." TxDOT states that this change would be consistent with the current EPA Region 6 CGP and would address the fact that routine maintenance is not limited to work in storm conveyances. Harris County asks for clarification in the definitions of "large construction activity" and "small construction activity" regarding whether reconstruction of an existing roadway (such as milling up asphalt and sub-grade/base to reconstruct original footprint) is considered a maintenance activity or is subject to TPDES coverage. Harris County also requests that TCEQ revise the definitions of "large construction activity" and "small construction activity" to include a specific list of the types of activities that are considered maintenance. Harris County also comments that it has conducted many previous such activities that were interpreted to be maintenance and not subject to TPDES permitting.

Response: TCEQ agrees with the comment made by TxDOT related to the NPDES CGP and revised the existing definition to more closely match the NPDES CGP, while retaining the examples in the TPDES CGP. With this change, TCEQ believes that additional examples will not be required in the definition. The final two sentences of the definition for "large construction activity" were replaced with the following sentence:

Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

In addition, the final two sentences of the definition of "small construction activity" were replaced with the following sentence:

Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the site (e.g., the routine grading of existing dirt roads, asphalt overlays of existing roads, the routine clearing of existing right-of-ways, and similar maintenance activities).

Comment: TxDOT requests that the definitions for "large construction activity" and "small construction activity" be revised to exclude emergency activities that are required to be performed to protect public health or safety. Alternatively, TxDOT suggests that the permit delineate a streamlined permitting procedure for emergency situations that would allow for the implementation of BMPs when possible, but not require the time-consuming development of a complete SWP3 or implementation of BMPs that are inappropriate to the situation.

Response: TCEQ recognizes that emergency situations may occur that necessitate construction activities be conducted very quickly, such as following a fire, flood, or hurricane. However, TCEQ declines to add an emergency provision addressing these activities. Operators of construction activities may utilize the "force majeure" provision as described in Part II.B.11. to address enforcement concerns. In addition, operators such as TxDOT that may need to commence emergency construction activities quickly may choose to develop some SWP3 templates that could be used for common emergency procedures.

Comment: SWS-Houston notes that, in the definition for "notice of termination," the term "permittee" was replaced with "discharger," and requests that it be changed back to "permittee." Harris County suggests replacing the word "a" in the definition of "notice of termination" with the word "this."

Response: TCEQ declines to make the change in the existing definition for "notice of termination" because it is consistent with TCEQ rules related to general permits in 30 TAC Chapter 205.

Comment: SWS-Houston and TxDOT recommend removal of the definition for "owner" as the term cannot be found in the body of the permit; and Fort Hood asks why this term was in Section I, when it is not used or referred to anywhere else in the permit.

Response: In response to the comment, the definition of "owner" was removed from the CGP.

Comment: Dallas and SAWS request that the word "sediment" be added to the definition of "pollutant."

Response: The definition included in the proposed CGP was based on the Texas Water Code definition of "pollutant." However, it is appropriate to note that sediment is of particular concern for regulated construction sites. Based on this information, the definition of "pollutant" was revised to include the following sentence at the end of the existing language: "For the purpose of this permit, the term "pollutant" includes sediment."

Comment: SWS-Houston recommends removal of the definition for "runoff coefficient" as the term cannot be found in the body of the permit.

Response: In response to the comment, the definition was removed because the term is not used in the body of the CGP.

Comment: TCB comments that the definition of "storm water and storm water runoff" seems to consider both terms as storm water.

Response: The definition in the new version of the CGP was revised from the existing CGP to remove the term "storm water" from the definition of "storm water," in an attempt to provide additional clarification. However, in response to the comment, the term was changed from "storm water and storm water runoff" to "storm water (or storm water runoff)."

Comment: SCIECA and Fort Hood note that perimeter controls were added to the definition of "temporary stabilization." Fort Hood comments that the definition is more confusing and contradictory. SCIECA comments that, while perimeter controls do not stabilize the exposed soil and should not be defined as temporary stabilization, they can control sediment from leaving the site if designed correctly. SCIECA states that other structural controls may work better than perimeter controls and should be considered appropriate for use in place of temporary stabilization. SCIECA proposes that TCEQ change "perimeter controls" to "structural controls" and that, if perimeter controls are allowed as temporary stabilization, then a 60 or 90 day time frame should be allowed before a more advanced form of stabilization is required. Fort Hood suggests that TCEQ either replace the word "erosion" in the second sentence with the term "the migration of pollutants" or delete the term "perimeter controls" from the list of example controls and replace the phrase "to prevent the migration of pollutants" with the phrase "to reduce or eliminate erosion." Fort Hood also comments that there is no mention of practices like phasing or temporary vegetation in the definition of "structural control (or practice)" and recommends including examples of practices and changing the term "device" to "device or practice" in the definition. Fort Hood also recommends adding erosion control compost to the list of example controls.

Response: TCEQ intends to allow certain perimeter controls to be used in place of temporary stabilization measures where those temporary stabilization measures are not feasible. To address the comments while also providing an allowance for the use of perimeter controls, two changes were made to the CGP. First, the definition of "temporary stabilization" was revised to remove the term "perimeter controls" and a second sentence was added to Section (b)(2) of the definition for "final stabilization" as follows:

(b) For individual lots in a residential construction site by either:

(1) the homebuilder completing final stabilization as specified in condition (a) above; or

(2) the homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization. If temporary stabilization is not feasible, then the homebuilder may fulfill this requirement by retaining perimeter controls or other best management practices, and informing the homeowner of the need for removal of temporary controls and the establishment of final stabilization.

In addition, Section III.F.2. of the CGP was revised in response to a comment specific to that section to allow the use of perimeter controls and other structural controls where temporary stabilization is not feasible.

Comment: Fort Hood states that including the term "temporary seeding" in the definition of "temporary stabilization" is a source of controversy. As written, it appears TCEQ is endorsing the application of seed only as a temporary stabilization method, though it will do nothing to prevent erosion without a protective cover, until the seed germinates and becomes established. Fort Hood recommends replacing the term "temporary seeding" with the term "the establishment of temporary vegetation" and adding a statement that the application of seed cannot occur without the use of additional structural controls.

Response: TCEQ declines to revise the definition of "temporary stabilization" and notes that the first part of the definition indicates that temporary stabilization exists where exposed soils or disturbed areas are provided a protective cover or other structural control to prevent the migration of pollutants. If temporary seeding does not result in a protective cover over exposed soils, then it would not meet the requirement of "temporary stabilization" at the construction site.

Part II

Comment: Fort Hood asks whether construction support activities addressed in Part II.A.2. that are located more than one (1) mile from the permitted construction site could be covered by the same SWP3 or would need to be authorized separately as either a small or large construction activity.

Response: Construction support activities that are located more than one mile from an authorized construction site cannot be covered under the construction site's SWP3 and would require their own coverage under an appropriate permit based on the activity being conducted. For example, storm water runoff from a borrow pit may be considered a mining activity and required to be authorized under TXR050000, the multi-sector industrial general permit for storm water (MSGP).

Comment: Fort Hood recommends changing the word "industrial" in Section II.A.2.(b) to "construction" since not all of the listed examples of construction support activities would fall into the category of an industrial activity. Additionally, Fort Hood asks whether depositing excess soils in one area would be considered a construction activity if it is not associated with an actual construction project.

Response: In response to the comment, the term "supporting industrial activity site" was changed to "construction support activities" in Section II.A.2.(b). Construction activity includes the stockpiling of fill material, as noted in the revised definition of "commencement of construction," discussed in an earlier response.

Comment: Fort Hood requests clarification and definitions for "related to" and "primary construction area" found in the last paragraph of Section II.A.2. Fort Hood also asks for more guidance on the common plan of development rule relating to projects that may be awarded as separate contracts to the same or different contractors that involve land disturbing activities within the 1/4 mile distance limit. Fort Hood asks why the definition of "common plan of development" does not include a requirement that activities be located within 1/4 mile, as mentioned in Section II.A.2. Fort Hood also asks whether the distance refers to 1/4 mile from any part of a construction site or from areas where land disturbance occurs. Finally, Fort Hood asks how this would apply to three or more construction sites that were almost 1/4 mile apart from adjacent sites, but lined up in a row so that the third and all farther sites were more than 1/4 mile from the first site. SCIECA comments that the word "must" in the second paragraph of Part II.A.2 limits an operator's ability to select the permit coverage of their choice and suggests an option that might work is that the activity must be authorized by a permit. SCIECA asks whether a concrete company would become part of their site's larger common plan of development if they were to purchase concrete from a concrete company that is located within 1/4 mile of their construction site. SWS-Houston requests that the distances and measuring points noted for related construction activity and support activities be made consistent with each other because of their interchangeability.

SWS-Houston comments that the permit outlines new requirements to include construction activity 1/4 mile away from the primary construction area in the common plan of development. SWS-Houston notes that other support activities may also be authorized under the CGP if they are included in the SWP3 and are no further than one mile from the boundary of the permitted construction site. SWS-Houston requests that the distances and measuring points, for related construction activity and support activities, be consistent with each other. TAB believes that the addition of construction support activities within 1/4 mile from primary construction area as part of the common plan of development is confusing and could potentially increase the number of small sites required to obtain permit coverage. Due to their being mobile and temporary in nature, TAB feels this calculation could be difficult; and they

urge removal of this section and retention of the language in the existing permit, which does not include construction support activities as part of the common plan of development. TxDOT suggests separating Part II.A.2 into two sections, "Authorization of Industrial Activities at Supporting Sites" and "Authorization of Other Earth Disturbance at Supporting Sites" as that would clarify the requirements and eliminate the confusion regarding whether the 1/4 mile or one mile distance applies.

Response: As stated in an earlier response, the last paragraph of Section II.A.2., which related to construction activities within 1/4 mile of each other, was deleted. TCEQ believes that the issues raised by the commentors above are addressed in the revised definition of "common plan of development or sale."

Comment: Zachry comments that the CGP seems to focus on residential and commercial property development and does not reflect conditions related to industrial construction. Zachry states that it would like to see the distance increased from the primary construction site to construction support activities from the proposed (1/4) mile to two miles, in order facilitate consolidation of permit requirements. Accordingly, Zachry proposes changes to the last paragraph of Section II.A.2 so that it reads as follows (changes in italics):

Discharges of storm water runoff from earth disturbing activities, including construction support activities, that are related to the primary construction area and located *on non-contiguous property* within one fourth (1/4) mile from the primary construction area, are a part of the common plan of development and must be authorized under this general permit if the common plan of development is greater than or equal to one acre. *Earth disturbing activities on contiguous or non-contiguous properties within two (2) miles of the primary construction area, which are included in the scope of work of a single contract for construction of interrelated industrial facilities may be considered part of a common plan of development for permit coverage purposes.*

Response: TCEQ added the last paragraph to Section II.A.2. to clarify that, in some cases, multiple related construction activities would not need to be considered as part of a larger common plan of development; while those within 1/4 mile of each other would need to be considered together. This is consistent with guidance provided by EPA and that TCEQ used in evaluating projects for municipalities and similar entities conducting similar land disturbance activities throughout their jurisdiction. It is apparent that Section II.A.2., related to construction support activities, was not the most appropriate location for this language. Therefore, the definition of "Common Plan of Development" was revised as indicated in an earlier response to include additional language related to the 1/4 mile distance for related projects. This change also removes the reference to the "primary" site. Therefore, it would apply to any sites that are part of the same project that are less than 1/4 mile from each other based on the boundaries of the disturbed areas.

Comment: Harris County suggests capitalizing "storm" in the title to Section II.A.3. so it will read "Non-Storm Water Discharges."

Response: This change was made as requested.

Comment: Fort Hood recommends adding the following parenthetical to the description of fire fighting activities in Section II.A.3.(a) in order to match the language in TPDES Permit No. TXR040000: "(fire fighting activities do not include washing of trucks, run-off water from training activities, test water from fire suppression systems, and similar activities)."

Response: This change was made as requested, as it provides clarification of the expectation that the item only refers to emergency fire fighting discharges.

Comment: SCIECA asks if there is a benchmark or limit used to determine the difference between chlorinated and hyperchlorinated water as described in the list of non-storm water discharges in Sections II.A.3.(b) and (e) of the CGP. Fort Hood asks TCEQ for a numerical standard or other explanation that can be used to determine whether or not previously hyperchlorinated water has been adequately dechlorinated with respect to the general permit and asks if it would be reasonable to assume that, if previously hyperchlorinated water met the "normal" potable water standard of <4 mg/L total chlorine residual, that would meet the requirement in this section. Harris County states that the term "hyperchlorinated water" is undefined and, therefore, unenforceable and requests that TCEQ establish a limit of no greater than 5 mg/L chlorine residual for discharges to surface water in the state.

Response: TCEQ recognizes that discharges containing chlorine, particularly at levels over 4.0 mg/l, may cause a water quality problem. However, no specific discharge limits were established. No discharge under this permit may cause or contribute to a violation of water quality standards; and this provision is not meant to authorize the involuntary discharge of chlorinated water, e.g., from a broken potable or drinking water line. A regulated municipal separate storm sewer system (MS4) operator may need to establish controls to address the discharge of potentially elevated levels of chlorine from these water sources. In addition, while the CGP allows non-storm water discharges from water line and fire hydrant flushing, it does not authorize the discharge of hyperchlorinated water, unless the water is first dechlorinated. Completely dechlorinated water is generally considered to contain less than 0.1 mg/l of chlorine.

Comment: SCIECA comments that it understands Section II.A.3.(c) to mean that water used to wash mud, dirt, or dust off of pavement is an allowable discharge, and requests verification of that understanding from TCEQ. SCIECA also asks whether the proposed permit allows the discharge of non-storm water produced from pressure washing driveways of newly constructed homes prior to sale, as long as BMPs are utilized to handle the water. SCIECA also asks whether the CGP is stating that wash water is allowed to leave the site without being treated if the water meets all the criteria above (Section II.A.3.a - h); and if not, SCIECA asks whether controls must be used. Fort Hood asks the purpose of prohibiting the use of pressure washers and asks how TCEQ would propose removing large amounts of mud from construction vehicles and equipment without them. Harris County contends that discharges from pressure washing of a building are no different from washing without pressure washing and suggests TCEQ delete the phrase "where pressure washing is not conducted," and recommends adding emphasis on BMPs to treat wash water runoff from areas where any washing is conducted at a site.

Response: In response to the comments, the phrase "where pressure washing is not conducted" was removed from the CGP. In addition, in order to clarify that BMPs must be utilized for storm water runoff as well as for the list of authorized non-storm water flows, the first sentence of the first paragraph of Part III was revised to read: "Storm water pollution prevention plans must be prepared to address discharges authorized under Section II.E.2. and II.E.3...."

In addition, the final sentence of the first paragraph was revised as follows:

The SWP3 must describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges associated with construction activity and non-storm water discharges described in Part II.A.3. and assure compliance with the terms and conditions of this permit.

Comment: Zachry comments that well water used for industrial site construction, which meets potable water quality standards but is not yet

certified or used as such, should be allowed as a potable water discharge and requests that TCEQ revise Section II.A.3.(e) to state "potable quality water." As an alternative, Zachry suggests adding the following definition of "potable water" to Section I.B. of the draft permit as follows: "Potable Water - Water from sources that meet standards for drinking water use."

Response: TCEQ believes that untreated well water would generally be considered allowable under Section II.A.3.(g), related to uncontaminated ground water. If well water is treated in a similar manner to potable water, then it may also be considered allowable under this provision. No changes were made based on this comment.

Comment: Fort Hood asks TCEQ's position or policy on the washing out of concrete trucks at unregulated construction sites, or sites that do not require coverage under this permit.

Response: Concrete truck washout may occur at any regulated construction site, provided that there is no discharge to surface water, and that the requirements of the general permit are met. Concrete truck washout at unregulated construction sites would need to be authorized under an alternative permit, such as TPDES General Permit Number TXG110000, related to Concrete Production Facilities. In response to the comment, this provision was removed from Section II.A.4. and replaced with a new Section II.B. as follows, and subsequent sections were renumbered accordingly.

Section B. Concrete Truck Wash Out

The washout of concrete trucks associated with off site production facilities may be conducted at regulated construction sites in accordance with the requirements of Part V of this general permit.

Comment: SCIECA comments that some enforcement inspectors at the MS4 level have interpreted the language in Section II.B.2. to mean that only storm water that is completely free of sediment or pollutants, can be legally discharged, and asks whether it is TCEQ's intent (as shown in Section II.A.5.) to disallow the discharge of storm water from an industrial site storm water that is commingled with wastewater and requests verification on this understanding or a revision of the requirement in order to eliminate confusion.

Response: In response to the comment, the beginning of the first sentence of Section II.B.2. (renumbered as Section II.C.2) was revised as follows: "Except as otherwise provided in Part II.A. of this general permit..."

TCEQ believes that additional changes are not required and that the existing permit language adequately states that storm water runoff from construction activities regulated under the CGP may be discharged provided that it is discharged in accordance with the conditions of the permit (e.g., in accordance with an SWP3 and other conditions).

Comment: TAB comments that TCEQ should provide the necessary information in Section II.B.4. regarding impaired waters and those segments that have total maximum daily loads (TMDLs). TAB suggests that this can be done on a website or as an appendix to the permit so that permittees can easily find the information.

Response: In response to the comment, Section IX.B. of the Fact Sheet was revised to add the following language after the existing paragraph describing information that is included in the NOI:

Applicants can locate information regarding the classified segment(s) receiving the discharges from the construction site in the "Atlas of Texas Surface Waters" or the TCEQ's Surface Water Quality Viewer, at the following TCEQ web addresses. These documents include identification numbers, descriptions, and maps:

Atlas of Texas Surface Waters:

http://www.tceq.state.tx.us/comm_exec/forms_pubs/pubs/gi/gi-316/index.html

Surface Water Quality Viewer:

http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/wqm/viewer/viewer.html

Applicants can find the latest EPA-approved list of impaired water bodies (the Texas 303(d) List) at the following TCEQ web address:

http://www.tceq.state.tx.us/compliance/monitoring/water/quality/data/wqm/305_303.html

In addition, TCEQ revised the second paragraph of Section II.C.4. to remove references to TMDL implementation plans.

Comment: SOS requests that language be added in Section II.B.5. in order to clarify that the term "commencement of construction" in the CGP includes not only initial site clearing, but also demolition, grading, and excavating. SOS believes that this change would dovetail with the definition provided in Section I.B.

Response: In response to the comment, the bolded language in the second sentence of the first paragraph of Section II.B.5. (renumbered as Section II.C.5.) was revised as follows:

In addition, commencement of construction (i.e., the initial disturbance of soils associated with clearing, grading, or excavating activities, as well as other construction-related activities such as stockpiling of fill material and demolition) at a site regulated under 30 TAC Chapter 213, may not begin until the appropriate Edwards Aquifer Protection Plan has been approved by the TCEQ's Edwards Aquifer Protection Program.

Comment: SCIECA asks why the language referring to "act of God" in Section II.B.11., was included when it will allow violating operators to claim *force majeure* after any major rain event, thus making enforcement more difficult, if not impossible. SCIECA also asks at what level should a storm event be considered catastrophic or vice-versa.

Response: This provision does not exempt a permittee from meeting the requirements of the CGP. The referenced rule (30 TAC §70.7) states that permittees may utilize a *force majeure* defense related to enforcement, but that the operator of the affected facility has the burden of proof to demonstrate that any pollution or discharge is not a violation. The rule is in effect regardless of whether it is included in the CGP. However, TCEQ elected to include it in the CGP to notify permittees of the existence of the rule.

Comment: SCIECA asks whether erosion and sediment controls should be designed for a 2-year/24-hour storm event like the detention ponds or for a smaller storm event. SCIECA believes that it would be clearer what is acceptable to TCEQ if a minimum design limit was required in the permit.

Response: TCEQ declines to require treatment to a particular size storm event at this time, but recognizes that it may be useful in many cases to consider a 2-year/24-hour storm event when choosing BMPs that will effectively remove pollutants from storm water runoff at regulated construction sites.

Comment: Zachry comments that many industrial plants (e.g., refineries, chemical plants, electric power generating facilities, and cement plants) are designed with storm water and process water containment and collection for the entire site, such that all storm water is collected and routed to a pond or ponds with individually permitted outfalls. Zachry believes that it is effectively duplicate permitting to require coverage under the CGP for these facilities and also comments that this permit seems to focus on residential and commercial construction rather than industrial construction. Zachry requests that TCEQ add the

following language as a new Section II.B.11., and renumber the existing II.B.11. as II.B.12.:

11. Construction Storm Water Discharges within an Individual Permitted Facility

Storm water discharges within an individually permitted facility where all storm water is collected and discharged through an existing permitted outfall(s) are not subject to TPDES storm water permit requirements. The Owner of the facility is responsible for directing and controlling discharges from construction activities into the collection system to meet existing permit requirements.

Response: Construction site storm water runoff that would otherwise be required to be authorized under the CGP may be covered under an individual TPDES permit only if that permit specifically includes construction site storm water in the list of authorized discharges. There are specific rules related to the need for a permit for construction site storm water runoff, and individual wastewater and storm water TPDES permits are written with effluent limits and conditions that take into account the list of waste streams submitted in the original application. TCEQ declines to add the requested language and notes that those industrial facilities who wish to authorize discharges from their construction activities in an individual permit may request to amend their individual TPDES permit.

Comment: Mesquite asks if a new fee will be required with the new NOI for on-going large construction activities applying for permit coverage per Section II.C.1.(b) that had coverage under the existing CGP. TAB suggests that TCEQ allow current permit holders authorization under their existing permits until they expire to prevent the TCEQ from becoming overwhelmed at application renewal time. Centex Homes seeks clarification regarding what category of operator is required to submit an NOI under this provision for ongoing coverage. Centex Homes asks whether the exclusion from the notice requirement set forth in Section II, Section D.3.(f) applies to those seeking continuing coverage under Section II.C.1.(b). TxDOT asks if an NOI was filed under the previous CGP to authorize an on-going construction activity, must an NOT be filed prior to submitting an NOI under the new CGP. Harris County requests a "grandfathering" period for sites where construction activities have ended, but final site stabilization has not yet been achieved so that, for sites that are simply "waiting for the grass to grow" will not be subject to the additional fees under the renewed permit.

Response: Primary operators at large construction sites must submit an NOI for continued coverage, unless the CGP allows for authorization without submittal of an NOI (such as for small construction sites meeting federal conditions in 40 CFR §122.28(b)(2)(v) and as adopted by reference in 30 TAC Chapter 281, related to being authorized without submitting an NOI). The operator responsible for submitting an NOI under the renewed CGP is the same entity that was responsible for submitting an NOI under the existing CGP. Therefore, the requirement to submit an NOI within 90 days would apply to all operators that are covered under the existing CGP. The provision to renew coverage does not apply to those operators not required to submit an NOI per Section II.D.3.(f) of the general permit. Operators required to submit an NOI within 90 days of the effective date of the renewed CGP will not be required to submit an NOT under the previous permit if the conditions for terminating coverage are met within the 90-day period. Those sites seeking renewed coverage must submit the required fee for the application to be considered complete. TCEQ declines to revise the permit in response to the comments.

Comment: TxDOT recommends that the term "issuance date" be replaced with "effective date" in Section II.C.1.(b) and comments that, with almost 2,500 active, on-going construction projects that will need to be brought into compliance with the new permit, a known and certain effective date would greatly assist us in making this transition.

Response: In response to the comment, page 1 of the CGP was revised to establish an effective date of March 5, 2008. Changes were also made to Sections II.D.1. and 2., and to Section II.E.8. of the CGP and to Parts II and VIII of the Fact Sheet to reflect this change.

Comment: Mesquite asks whether new construction site notices will be required for small ongoing construction sites described in Section II.C.2.(b).

Response: Yes, ongoing construction activities will be required to utilize the forms developed for this general permit, including posting new site notices.

Comment: Fort Hood recommends deleting the following phrase from the end of the first sentence of the final paragraph of Section II.D.2. because it is redundant, unnecessary, and uses poor grammar: "...are considered to be large construction activities."

Response: In response to the comment, the final paragraph of Section II.D.2. (renumbered as Section II.E.2.) was revised as follows:

As described in Part I (Definitions) of this general permit, large construction activities include those that will disturb less than five acres of land but that are part of a larger common plan of development or sale that will ultimately disturb five or more acres of land and must meet the requirements of Part II.E.3. below.

Comment: SWS-Houston believes that the new provision in Section II.D.3(b) requiring NOI submittal ten days prior to commencing construction will unreasonably delay large construction activities and suggests that a more reasonable deadline would be five days prior to commencement of construction. SCIECA also believes that the ten-day waiting period for a paper NOI submittal is excessive and suggests that the standard mailing time within the state of two to five days is more appropriate. AEP contends that very little benefit will be gained by extending the waiting period from two to ten days, considering the potential to disrupt schedules and delay construction. Harris County, Oncor, Capital Environmental, and AEP request that TCEQ retain the current two-day waiting period for provisional authorization of coverage under the CGP. TAB expresses concern that the proposed ten-day waiting period will adversely affect its members and that TCEQ should reconsider and allow provisional coverage to begin once a paper NOI is postmarked. Capitol Environmental believes that operators should not be penalized or held to more stringent requirements for using a paper NOI. Harris County asks whether "ten days" means business days or calendar days and asks that TCEQ clarify whether "ten days prior to commencing construction activities" means ten days from the date the NOI is postmarked or the date received by TCEQ. Tarrant County comments that the ten-day waiting period is unacceptable and respectfully requests TCEQ re-evaluate it.

Response: In response to the comments, the number of days before a large construction activity receives provisional authorization for a paper NOI submittal was revised from ten to seven days. This time period should allow time for TCEQ to receive NOIs and insure that NOIs are available at the Storm Water NOI Processing Center when actual construction activities begin. This will assist TCEQ in providing information to concerned persons requesting information on particular NOIs regarding large construction activities. TCEQ disagrees that this new provision will delay construction activities to a great extent. Persons seeking coverage under the CGP also have the option of submitting an NOI electronically, which does not have a seven-day waiting period for provisional authorization. For the case of a change in operator, no changes were made to the requirement for the new operator to submit

notification 10 days before a transfer of ownership. This is consistent with TCEQ general permit rules in 30 TAC §205.4(h).

Comment: Harris County comments that it agrees with the intent of Section II.D.3.(b), but states that the signatory requirements of the NOI will not allow the NOI to be submitted electronically.

Response: The NOI requirements for a paper NOI and an electronic submittal are identical, although a State of Texas Environmental Electronic Reporting System (STEERS) Participation Agreement (SPA) is currently required to utilize the STEERS system for electronic submittal. The authorized signatory for the operator may submit an SPA and other personnel may also submit an SPA to complete the NOI to the point that it is ready for signature. TCEQ expects that electronic NOI submittal should still be easier than requiring an ink signature on every NOI that is submitted.

Comment: SCIECA asks what is gained by requiring in Section II.D.3.(c) for the NOI to be posted and expresses concern that sensitive company information is included on the NOI and, therefore, should not have to be posted for public viewing. SCIECA further comments that all relevant information that might be needed by an inspector or the general public is found on the Construction Site Notice. In light of protecting company information from possible fraudulent use, SCIECA asks whether there is not another way for TCEQ to have the required information posted at the site without requiring the permittee to post all of the company's information.

Response: TCEQ declines to remove the requirement to post a site notice for large construction sites that are required to submit an NOI. Posting the NOI provides the public and inspectors who drive past the site some assurance that the construction site does have permit coverage, provides information on who to contact if there is a problem, may facilitate reporting by the public, and is consistent with the requirements of the EPA's CGP. TCEQ also notes that all information on the NOI is available to the public and cannot be claimed as confidential.

Comment: TxDOT suggests omitting the language requiring the notice to be maintained in one location. TxDOT comments that its projects are usually located adjacent to active roadways and are, therefore, potentially dangerous and believes that it is inappropriate for them to post a notice in a location that could be hazardous for someone to approach. TxDOT requests that TCEQ consider inserting "safely and" before the phrase "readily available" in both paragraphs of Section II.D.3.(c) in order to clearly allow applicants to take safety into consideration when determining a posting location. SWS-Houston comments that the location requirements of posting the NOI and site notices in Section II.D.3.(c) and the site notice in Section III.D.2. differ and requests that they be revised to be consistent.

Response: In response to the comment, Section II.D.3.(c) (renumbered as Section II.E.3.(c)) was revised to insure that the site notice is posted in a location where it is safely and readily available. In addition to the requirement to maintain the notice in that location this language was revised to account for linear construction projects. In addition, the location for posting the site notice was changed in Section II.D.2.(b) (renumbered as Section II.E.2.(b)) to be consistent with the requirement in Section II.D.3. for linear construction sites. The following revised language replaced the existing Section II.D.3.(d) (renumbered as Section II.E.3.(d)):

all operators of large construction activities must post a site notice in accordance with Section III.D.2. of this permit. The site notice must be located where it is safely and readily available for viewing by the general public, local, state, and federal authorities prior to commencing construction, and must be maintained in that location until completion of the construction activity (for linear construction activities, e.g. pipeline or highway, the site notice must be placed in a publicly accessible location near where construction is actively underway; notice for these linear sites may be relocated, as necessary, along the length of the project, and the notice must be safely and readily available for viewing by the general public; local, state, and federal authorities); and...

Comment: SWS-Houston requests that operators described in Section II.D.3.(f) be exempted from signatory and reporting requirements outlined in Sections II.D.3.d, II.E.3, III.A, III.D.2, III.E.2, III.F.1.(k) and any other section of the CGP requiring action from "all operators" or from "those operators of large construction sites not required to submit an NOI." SWS-Houston also comments that they believe that the proposed, broader definition of operator will increase the number of operators involved, thus complicating the development and management of the SWP3. SWS-Houston also comments that the increased burden of obtaining timely signatures on certifications, reports, and other information from these additional operators will unreasonably complicate the development and management of shared SWP3s, thus negating the best opportunity to coordinate compliance efforts on large construction sites.

Response: TCEQ declines to make the requested changes. Operators not required to submit an NOI are still regulated under the CGP. Therefore, it is necessary that they be required to certify that they are in compliance with the CGP by posting a site notice. Where operational control of a construction activity is transferred, TCEQ believes that it is necessary for the original operator to attempt to notify the new operator of their responsibilities under the CGP.

Comment: SCIECA asks for clarification on the issue of who needs to file an NOI under Section II.D.3.(b) and states that TCEQ has confused the matter. Centex Homes believes that, although the agency was attempting to clarify the category of operators required to submit an NOI under Section II.D.3.(b), the proposed language is too vague to provide proper guidance to the regulated community. Centex Homes suggests that the TCEQ provide clear, specific, objective, and measurable criteria to determine whether an operator is required to submit an NOI. Centex Homes suggests that TCEQ provide examples of factual scenarios when operators do not have to submit an NOI. Centex Homes provides the following example and requests TCEQ to comment on it specifically regarding whether submitting an NOI is necessary:

Would an operator be required to file an NOI if he has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications, but delegates, via contract, complete responsibility for compliance with the requirements and conditions of the general permit to a third party?

Response: In response to the comments and as noted in previous responses regarding the definition of "operator," the definition was revised to define two subsections of the term; "primary operators" and "secondary operators." Section II.D.3.(b) (renumbered as Section II.E.3.(b)) was revised as follows for consistency with the revised definition of "operator."

primary operators must submit a Notice of Intent (NOI), using a form provided by the executive director, at least seven days prior to commencing construction activities, or if utilizing electronic submittal, prior to commencing construction activities. If an additional primary operator is added after the initial NOI is submitted, the new primary operator must submit an NOI at least seven days before assuming operational control, or if utilizing electronic NOI submittal, prior to assuming operational control. If the primary operator changes after the initial NOI is submitted, the new primary operator must submit a paper NOI or an electronic NOI at least ten days before assuming operational control; ...

Comment: CRI asks whether the site notice required in Section II.D.3.(d) must be in TCEQ's format. Tarrant County comments that

it is important for the regulated community to see that it is a new requirement to have this site notice posted even if it is not necessary to submit an NOI. Therefore, Tarrant County suggests that it be emphasized and also clearly stated in the Fact Sheet under Section V. - Changes From Existing Permit. Tarrant County states that this requirement is new and is not clearly presented in the CGP, the Fact Sheet, or anywhere else and believes that the information is important for the regulated community to see and understand. Tarrant County requests that this requirement needs to be put in bold and discussed more, as well as being made very clear in Part V. of the Fact Sheet.

Response: All site notices posted under the CGP are required to be in an approved TCEQ format. TCEQ declines to make additional changes to the permit to outline the new requirement regarding use of the TCEQ site notice. However, Section V.B. of the Fact Sheet was revised as follows:

TCEQ revised the definition of "operator" to be consistent with the definition in EPA's current Construction General Permit. The definition for "operator" includes a definition for "primary operator" and "secondary operator," and the draft permit contains specific requirements for secondary operators of large construction activities. Secondary operators of large construction activities would be regulated under the general permit but would not be required to submit an NOI. Also, a requirement was added that all operators and secondary operators must post a TCEQ site notice for large construction activities.

Comment: SCIECA comments that it does not fully understand the requirement in Section II.D.3.(e) to send a copy of the NOI to the operator that has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications. SCIECA states that it appears that, if the owners have control of the plans and specifications, then they would most likely have control over the contractor and the project and thus would already know when work on the project was to start. SCIECA asks TCEQ to provide an example of a project that the operator in charge of plans and specifications would not know that the other operators were going to commence operations and further asks that TCEQ explain what is gained by this requirement. Harris County understands this requirement to mean that, as owner and operator, it would be required to submit a copy of its NOI to its contractors; and they object to this requirement and request it be deleted from the permit. Oncor comments that the copies of the NOIs do not need to be included in the SWP3 because the SWP3s already contain too much information and requests that TCEQ revise the language in Section II.D.3.(e) to read: "at least two days prior to commencing construction activities, list in the SWP3 the names and addresses of all MS4 operators receiving a copy."

Response: In response to the comments, Section II.D.3.(e) (renumbered as Section II.E.3.(e)) was revised as follows, and Part VI was also changed to clarify that records of submittal must be retained (see response in Part VI). The requirement to notify the secondary operator was retained. TCEQ believes that this is necessary to insure that the secondary operator is aware that other regulated operators are meeting their obligations under the CGP.

(e) all primary operators must provide a copy of the signed NOI to the operator of any municipal separate storm sewer system (MS4) receiving the discharge and to any secondary operator, at least seven days prior to commencing construction activities, and must list in the SWP3 the names and addresses of all MS4 operators receiving a copy.

Comment: Oncor comments that it appreciates TCEQ's desire to document proof of notice to an affected MS4 but believes it is unnecessary to retain such proof in the SWP3s because they already contain such a large amount of information. Oncor believes that the NOI, NOC, and NOT submittals to affected MS4 operators are just three of several records that should be retained as supporting documentation to show compliance with the general permit, but does not believe the documents need to be included in the SWP3. Oncor expresses concern that TCEQ is beginning to lose sight that the SWP3 is intended to be a working document developed for use in the field by construction personnel. Oncor recommends that TCEQ add proof-of-submittal documentation to Part VI. as a specific requirement and recommends that TCEQ revise the following sections of the draft permit as follows:

In Section II.E.6., revise language to read:

...receiving the discharge, and list in the SWP3 the names and addresses of all MS4 operators receiving a copy.

In Section II.F.1., revise language to read:

...any MS4 receiving the discharge (list in the SWP3 the names and addresses of all MS4 operators receiving a copy)...

Response: TCEQ agrees to make the requested changes and also revised Part VI. to add the following Section VI.4.:

4. All records of submittal of forms submitted to the operator of any regulated MS4 receiving the discharge and to the secondary operator of the regulated construction site, if applicable.

Comment: Centex Homes asks what an excluded operator should do if he discovers that another operator has not filed an NOI. To minimize the administrative burden on all parties involved, Centex Homes urges TCEQ to not require the excluded operators to file an NOI, whether or not anyone else has filed an NOI, since the excluded operator would have the authority to require that the appropriate operator file the NOI. Centex Homes comments that the exclusion from the NOI requirement under Section II.E.3.(f) is inconsistent with the reasoning for the exclusion and will undermine its usefulness. Centex Homes also notes that TCEQ already has adequate enforcement options without requiring an excluded operator to file an NOI.

Response: If a secondary operator finds that a regulated operator has not filed an NOI, then it is the responsibility of that secondary operator to notify the regulated operator of the need for coverage. TCEQ agrees that the availability of an exclusion from submitting an NOI should not be limited on the requirement for other operator(s) to have filed NOIs, but it is contingent on the presence of other regulated operators. In response to the comment, the end of the first sentence of Section II.E.3.(f) was revised to replace "...but are not required to submit an NOI, provided another operator(s) at the site has submitted an NOI..." with the following language:

...but are not required to submit an NOI, provided that another operator(s) at the site has submitted an NOI, or is required to submit an NOI and the secondary operator has provided notification to the operator(s) of the need to obtain coverage (with records of notification available upon request)...

In addition, TCEQ has removed Section II.E.8.(c), related to including on the NOI the names of other operators.

Comment: SWS-Royce seeks clarification on who is responsible for filing NOIs under Section II.D.3.(f), and TCB believes that the explanation of which operators must file an NOI and which do not is confusing and should be revised to describe those operators that must submit an NOI. Fort Hood recommends deleting or significantly editing the language in Section II.D.3.(f) because it is extremely confusing and does not make sense. Due to the confusing and repetitive nature of the criteria, TxDOT recommends that Sections II.D.3.(f) be replaced with:

All persons meeting the definition of "operator" in Part I of this permit, but which are not required to submit an NOI by Part II.D.3.(b) of this permit, are hereby notified that they are regulated under this general

permit, but are not required to submit an NOI, provided another operator(s) at the site has submitted an NOI.

Any operator notified under this provision may alternatively seek coverage under an alternative TPDES individual permit or general permit if available.

Response: In response to the comments, the following language was used to replace the existing language in II.D.3.(f) (renumbered as II.E.3.(f)), to incorporate the revision to the definition for "operator" and to notify secondary operators that they are not prohibited from submitting an NOI under this general permit:

All persons meeting the definition of "secondary operator" in Part I of this permit are hereby notified that they are regulated under this general permit but are not required to submit an NOI, provided that another operator(s) at the site has submitted an NOI, or is required to submit an NOI and the secondary operator has provided notification to the operator(s) of the need to obtain coverage (with records of notification available upon request). Any secondary operator notified under this provision may alternatively submit an NOI under this general permit, may seek coverage under an alternative TPDES individual permit, or may seek coverage under an alternative TPDES general permit, if available.

Comment: TxDOT asks what elements of compliance an operator described under Section II.D.3.(f) would be responsible for if that operator controls neither plans/specifications to the extent necessary to ensure compliance with the CGP, nor day-to-day activities at the site. TxDOT further asks what that operator's SWP3 should include. Fort Hood and SCIECA ask that TCEQ give examples of situations where an NOI would not be required despite being a large construction activity operator regulated under the CGP.

Response: A secondary operator that is regulated under the CGP, but not required to submit an NOI would have limited responsibilities under the SWP3, as other operators would be responsible for the majority of the technical requirements of the permit. Example of elements that a secondary operator would have responsibility for may include the decision to hire or fire a contractor on a construction project or the approval or denial of funds to revise the BMPs used at the site for storm water control. However, a secondary operator's responsibilities would be expanded in the event that there was not another operator at the site or if another operator vacated the site, because the new definition of "secondary operator" states that a secondary operator becomes a primary operator if there are not other operators at the site.

Comment: Harris County restates its objections to having a 10-day waiting period for those operators unable to submit notices electronically (See Section II.D.5.(b)). Harris County requests that the TCEQ revise the signatory requirements of 30 TAC §305.44(3) separately from the CGP, to allow a principal executive officer or ranking elected official to designate his authority, thereby allowing governmental agencies to submit forms electronically. Harris County also believes that TPDES requirements should be consistent with Federal signatory requirements which allow for the delegation of signatory authority from an "executive officer."

Response: As stated in an earlier response, TCEQ revised the proposed ten-day period for provisional authorization to seven days in response to comments. Additionally, TCEQ believes that the signatory requirements in 30 TAC §305.44 are equivalent to the requirements set out in federal rules at 40 CFR §122.22(a). The ability to delegate authority based on corporate procedures (as described in 40 CFR §122.22(a)(1)(ii)) is equivalent to the requirement in 30 TAC §305.44(a)(1).

Comment: SCIECA asks if the TCEQ could change the requirement to submit an NOC within 14 days of knowledge of the change rather than 14 days before the change, since there will be times when changes will not be foreseen that far in advance. SWS-Houston asks that it be 14 days after the change occurs, matching the current deadline for correcting incomplete or incorrect information. SWS-Royse seeks clarification on submitting the NOC 14 days prior to change. Centex Homes thinks that the timeframes for submitting the NOC and the NOI should be consistent and requests that TCEQ adopt the NOI 10-day timeframe for both. TxDOT suggests that the requirement to provide notice within 14 days of discovery, as stated in the current permit, should be retained in the CGP to account for the reporting of unplanned changes. Harris County finds that changes can occur frequently and suddenly due to unforeseen circumstances, and believes that 14 days advance notice is unrealistic and, therefore, requests that the requirement be removed.

Response: 30 TAC §205.4(h) states that general permits must require permittees to submit up-to-date information to the executive director in an NOC within a specified period of time prior to a change in previous information provided to the agency or any other change with respect to the nature or operations of the facility or the characteristics of the discharge. Where the permittee is aware of the change, TCEQ believes it is appropriate to retain the 14-day requirement. However, where a change occurs that the permittee became aware of following the change, it is appropriate to require an NOC within 14 days of being aware of the change. Therefore, the first two sentences of Section II.D.6.(b) (renumbered as II.E.6.) were revised as follows:

If relevant information provided in the NOI changes, an NOC must be submitted at least 14 days before the change occurs, if possible. Where 14-day advance notice is not possible, the operator must submit an NOC within 14 days of discovery of the change. If the operator becomes aware that it failed to submit any relevant facts or submitted incorrect information in an NOI, the correct information must be provided to the executive director in an NOC within 14 days after discovery ....

Comment: TxDOT suggests that Section II.D.6. be revised to replace the phrase "decrease in the site acreage" with "decrease in the acreage of disturbed earth." TxDOT also requests that TCEQ take this opportunity to delineate what level of additional earth disturbance, beyond that predicted and reported in the NOI, will require an NOC, and suggests that a 20% or greater increase in the originally reported acreage would be reasonable.

Response: TCEQ agrees with the first portion of the comment and revised the first sentence of the third paragraph of Section II.D.6. (renumbered as Section II.E.6.) for consistency with the language regarding an increase in acreage: "An NOC is not required for notifying TCEQ of a decrease in number of acres disturbed . . .."

With respect to notification of an increase in the number of acres disturbed, an NOC would not be required where the number of acres disturbed increased by less than one acre. However, an NOC would be required for any increases over one acre. This is required because an increase in the acreage could be considered a substantial change to the information submitted, and 30 TAC §205.4(h) states that general permits must require applicants to submit an NOC for any change with respect to the nature or operations of the facility or the characteristics of the discharge. TCEQ believes that an increase in one or more acres of disturbed land would necessitate an NOC. Therefore, the first sentence of the second paragraph of Section II.E.6. was revised as follows:

Information that may be included on an NOC includes, but is not limited to, the following: the description of the construction project, an increase in the number of acres disturbed (for increases of one or more acres), or the operator name.

Comment: SWS-Houston requests that changes to phone numbers, addresses, and other incidental contact information listed on an NOI be allowed to be changed without the need of an NOC signed by the operator, as currently required in Section II.D.7. of the draft permit.

Response: 30 TAC §205.4(h) states that general permits must require permittees to submit up-to-date information in a notice of change (NOC) within a specified period of time prior to a change in previous information provided to the agency. Because this information is required in the NOI, any change would necessitate an NOC.

Comment: TxDOT requests that TCEQ clarify whether Section II.D.8.(a), related to including the TPDES authorization number for facilities regulated under the TPDES CGP, is intended to apply to other authorizations at the current site or to all of the applicant's authorizations. TxDOT comments that it would not be feasible to require all the applicant's other authorization numbers, because an applicant may have thousands of authorizations throughout the state.

Response: This item refers to the authorization number for the applicant's existing authorization number for the construction activity at the same site. This requirement only applies to operators resubmitting an NOI for an ongoing construction activity, i.e., a "renewal" authorization. To clarify the intent, the Section II.D.8.(a) (renumbered as II.E.8.(a)) was revised as follows:

(a) the TPDES CGP authorization number for existing authorizations under this general permit, where the operator submits an NOI to renew coverage within 90 days of the effective date of this general permit; . . ..

Comment: Harris County questions the value in Section II.D.8.(h) of having the applicant include the stream segment number on the NOI, particularly because this information is self-reported. Harris County requests that this requirement be deleted from the NOI. If TCEQ elects to keep this information request on its NOI form, then Harris County asks that this information be added to the list under "Contents of NOI" and clarification regarding the segment numbering convention that should be used. Harris County also recommends that TCEQ provide a GIS-based scalable map on its website that any operator could quickly access to determine stream segment number.

Response: In response to the comment, and for consistency with other TCEQ general permits, Section II.E.8.(h) was revised to require the name of the receiving water(s) on the NOI, Section II.E.8.(h) was revised to require the classified segment number, and Section II.D.8.(i) (renumbered as II.E.8.(i)) was added to require the name(s) of any surface water(s) receiving the discharge that are on the latest EPA-approved list of impaired waters. The revised language is as follows.

(g) name of the receiving water(s);

(h) the classified segment number for each classified segment that receives discharges from the regulated construction activity (if the discharge is not directly to a classified segment, then the classified segment number of the first classified segment that those discharges reach; and

(i) the name of all surface waters receiving discharges from the regulated construction activity that are on the latest EPA-approved Clean Water Act §303(d) list of impaired waters.

In a previous response TCEQ revised Section IX.B. of the Fact Sheet to include two TCEQ website map references for obtaining information on segment numbers.

Comment: Mesquite comments that the removal of all silt fence and other temporary erosion controls need to be required prior to submitting an NOT for large construction sites and prior to removing the site notices for small construction sites. Mesquite also states that the proposed language does not place this requirement on the operator as it should (see renumbered Section II.F.1.(a)). Greg Mast comments that currently the permit requires temporary controls to be removed prior to an NOT being submitted, but makes no reference to the status of permanent controls when the NOT is submitted.

Response: TCEQ believes that the definition of "final stabilization" provides an adequate description of the requirements for terminating coverage at sites where construction has been completed. This definition states that, in order to be considered finally stabilized, all soil disturbing activities at the site must have been completed; and a uniform perennial vegetative cover must have been established or equivalent permanent stabilization measures employed. The installation and removal of silt fence and other temporary erosion controls would still be considered as a soil disturbing activity and should be completed prior to considering the site finally stabilized.

Comment: Dallas asks whether an NOT would be required for termination if a site was required to submit an NOI, but never did. If not, then Dallas asks what the operator should do in this case. Dallas also asks whether an MS4 operator is still required to conduct inspections if the construction site operator vacates a stabilized site without filing an NOT. SWS-Royse asks why an operator may not file an NOT, unless the new operator has applied for coverage.

Response: An NOT is required to terminate coverage that was obtained with an NOI. If an operator of a regulated construction site did not submit an NOI and the site meets the conditions for final stabilization, then the operator may not file an NOT because TCEQ has no record of the construction activity because an NOI was not filed. However, Section II.D.5.(c) of the permit states that an operator is not prohibited from filing a late NOI. Therefore, if construction activities are still ongoing, an NOI may be submitted. An NOT may then be filed upon meeting the conditions for terminating coverage.

Comment: SCIECA and SWS-Royse ask that TCEQ clarify what would be acceptable as the record of notification (or attempt at notification) by an operator transferring coverage in Section II.E.1.(b). SCIECA specifically asks about certified mail, a hand-written note, and e-mail confirmation. SWS-Houston asks whether a signed copy of the NOT sent to the new operator will suffice as official notification. SECA supports the requirement that the terminating operator attempt to notify the new operator in writing of the requirement to obtain permit coverage.

Response: Records of notification may include proof of mailing the notification (i.e., certified mail or overnight mail), a facsimile (FAX) record, a date-stamp for a hand-delivery of notification, or record of electronic mail to the new operator. Provided that the original operator attempts to notify the new operator of the need to obtain coverage, the original operator may file its NOT even if the new operator does not file an NOI.

Comment: SCIECA asks that TCEQ add a requirement to Section II.E.3. for the operator to notify the MS4 operator and remove the site notice upon termination of coverage. SCIECA states that, without this requirement, the MS4 operator will not know when work was completed if the only requirement is for the construction site operator to terminate is to remove their site notice. Harris County appreciates the inclusion of Section II.E., requiring operators to submit NOTs to the applicable site operator. SAWS believes that all sites should submit an NOT and that small construction activities should, at a minimum, submit an NOT to the MS4 operator. SAWS recommends adding new Sections II.E.1.(d) and 3.(d) as follows:

(d) All regulated construction sites working under the authorization of this General Permit must meet one or more of the conditions of termination described in this Section, prior to terminating responsibilities at the construction site.

Response: TCEQ declines to add an NOT requirement for operators not required to submit an NOI. However, TCEQ recognizes that regulated construction operators should be required to document the date that termination of coverage was obtained and should, at a minimum, notify the MS4 operator of termination of coverage for sites not requiring an NOI. Therefore, in response to the comments, the first full paragraph of Section II.E.3. (renumbered II.F.3.) was revised to require notification of termination of coverage to the MS4 operator by submitting the completed site notice with information on the date that the site notice was removed or by otherwise notifying the MS4 operator. In addition, the site notices were revised to include a place for the operator to include the date the site notice was removed.

Each operator that has obtained automatic authorization and has not been required to submit an NOI must remove the site notice upon meeting any of the conditions listed below, complete the applicable portion of the site notice related to removal of the site notice, and submit a copy of the completed site notice to the operator of any MS4 receiving the discharge (or provide alternative notification as allowed by the MS4 operator, with documentation of such notification included in the SWP3), within 30 days of meeting any of the following conditions: . . ..

Comment: SAWS recommends adding the following sentence to Section II.E., so that a permittee will explicitly understand that enforcement actions may be taken by the MS4 Operator or TCEQ if the site does not meet termination requirements. SAWS believes that this change will keep operators from filing an NOT without stabilizing the site, transferring ownership, or leaving temporary controls in place: "Enforcement actions may be taken if a permittee terminates Permit coverage without meeting one or more of the conditions of termination described in this Section."

Response: TCEQ declines to add the requested language and believes that the existing language is sufficient to indicate what the permit requires. For example, Section II.E. (renumbered II.F.) states in several locations that an NOT must be submitted when certain conditions are met. In addition, Section VII.1. of the CGP states that failing to comply with any permit condition is a violation and is grounds for enforcement action.

Comment: Centex Homes requests that TCEQ add language from the Fact Sheet in Section II.F.1 to the permit for clarification on transfer of operational control. In addition, Centex Homes requests that TCEQ add the following language to Section II.F.2., in order to clarify developer/homebuilder responsibilities after the transfer of finished lots. If revised, the current Sections II.F. through II.H. in the draft permit would be re-numbered as Sections II.G. through II.I.:

Section F. Transfer of Operational Control

1. No Transfer of Coverage: Coverage under this general permit is not transferable. If the operator of the construction activity changes, then the original operator must submit a Notice of Termination (NOT) within 10 days prior to the date that responsibility for operations terminates and the new operator must submit an NOI at least 10 days before assuming operational control, or 24 hours before assuming operational control if submitting an NOI electronically. A change in operator includes changes to the structure of a company, such as changing from a partnership to a corporation, or changing corporation types that changes the filing (or charter) number with the Texas Secretary of State.

2. Homebuilders: The steps in Section F.1 above also apply to a homebuilder who purchases one or more lots from an owner/developer who obtained coverage under this general permit for a common plan of development or sale. The homebuilder is considered a new owner/operator and shall comply with the requirements listed above, including the development of a SWP3 if necessary, for its lot(s). Under these circumstances, the homebuilder is only responsible for compliance with the general permit requirements as they apply to its lots. The developer remains responsible for common controls or discharges and must submit an NOT for the lots purchased by the homebuilder.

Response: TCEQ agrees that additional clarification would be useful in explaining that a new NOI is required for a transfer of ownership for the operator and revised several portions of the CGP and Fact Sheet as described below. The changes are not exactly as requested by the commentor, but TCEQ believes that they adequately address the comments. Changes were made to clarify that, when operational control transfers from one entity to another, the original operator must submit an NOT and the new operator must submit an NOI at least 10 days prior to the transfer of control. This is required based on 30 TAC §205.4(h). For sites not required to submit an NOI, the 10-day provision is not mandatory. For operators who submitted electronic NOIs, the requirement based on 30 TAC §205.4(h) does not differentiate. Therefore, submittal of the NOT by the original operator and the NOI by the new operator is required at least 10 days prior to a transfer in coverage. In addition, clarifying language regarding homebuilders was added to the Fact Sheet and CGP, although the requested language was revised to clarify that an NOT is not required for the operator transferring individual lots to the homebuilder, so long as the SWP3 is amended to include the change in property boundaries. In Section II.D.3.(b) (renumbered II.E.3.(b)), the reference to 24 hours for electronic submittal of an NOI for a change in primary operator was removed. In addition, Sections II.F.1. through 3. were revised and Section II.F.4. was added to clarify the requirements for terminating coverage in the case of a change in operator:

1. ...The NOT must be submitted to TCEQ, and a copy of the NOT provided to the operator of any MS4 receiving the discharge with a list in the SWP3 of the names and addresses of all MS4 operators receiving a copy, within 30 days after any of the following conditions are met:

(a) final stabilization has been achieved on all portions of the site that are the responsibility of the permittee; or

(b) a transfer of operational control has occurred (See Section II.F.4. below); or

(c) the operator has obtained alternative authorization under an individual TPDES permit or alternative general TPDES permit."

2. No changes.

3. Termination of Coverage for Small Construction Sites and for Secondary Operators of Large Construction Sites

Each operator that has obtained automatic authorization and has not been required to submit an NOI must remove the site notice upon meeting any of the conditions listed below, complete the applicable portion of the site notice related to removal of the site notice, and submit a copy of the completed site notice to the operator of any MS4 receiving the discharge (or provide alternative notification as allowed by the MS4 operator, with documentation of such notification included in the SWP3), within 30 days of meeting any of the following conditions:

(a) final stabilization has been achieved on all portions of the site that are the responsibility of the permittee;

(b) a transfer of operational control has occurred (See Section II.F.4. below); or

(c) the operator has obtained alternative authorization under an individual or general TPDES permit . . ..

4. Transfer of Operational Control

Coverage under this general permit is not transferable. A transfer of operational control includes changes to the structure of a company, such

as changing from a partnership to a corporation, or changing to a different corporation type such that a different filing (or charter) number is established with the Texas Secretary of State.

When the primary operator of a large construction activity changes or operational control is transferred, the original operator must submit a Notice of Termination (NOT) within ten days prior to the date that responsibility for operations terminates, and the new operator must submit an NOI at least ten days prior to the transfer of operational control, in accordance with condition (a) or (b) below. A copy of the completed site notice must be provided to the operator of any MS4 receiving the discharge, in accordance with Section II.F.3. above.

Operators of regulated construction activities who are not required to submit an NOI must remove the original site notice for the original operator, and the new operator must post the required site notice prior to the transfer of operational control, in accordance with condition (a) or (b) below. A copy of the completed site notice must be provided to the operator of any MS4 receiving the discharge in accordance with Section II.F.3. above.

A transfer of operational control occurs when either of the following criteria is met:

(a) Another operator has assumed control over all areas of the site that have not been finally stabilized; and all silt fences and other temporary erosion controls have either been removed, scheduled for removal as defined in the SWP3, or transferred to a new operator, provided that the permitted operator has attempted to notify the new operator in writing of the requirement to obtain permit coverage. Record of this notification (or attempt at notification) shall be retained by the operator in accordance with Part VI of this permit. Erosion controls that are designed to remain in place for an indefinite period, such as mulches and fiber mats, are not required to be removed or scheduled for removal.

(b) A homebuilder has purchased one or more lots from an operator who obtained coverage under this general permit for a common plan of development or sale. The homebuilder is considered a new operator and shall comply with the requirements listed above, including the development of a SWP3 if necessary. Under these circumstances, the homebuilder is only responsible for compliance with the general permit requirements as they apply to lot(s) it has operational control over, and the original operator remains responsible for common controls or discharges, and must amend its SWP3 to remove the lot(s) transferred to the homebuilder.

Comment: Harris County states that "interpolate" is misspelled in Section II.F.2.(d). In addition, Harris County points out that the section entitled "Effective Date of Waiver" in Section II.F.2. should actually refer to Section II.F.3. and that the section entitled "Activities Extending Beyond the Waiver Period" should actually refer to Section II.F.4.

Response: These corrections were made as noted (See renumbered Sections II.G.2.-4.).

Comment: Harris County comments that Section II.G.2. related to the need to suspend work while preparing an individual permit application and submitting the application 330 days prior to resuming work would result in costly overruns and undue hardship. Therefore, Harris County requests a hearing process or similar administrative procedure to contest TCEQ's suspension of general permit coverage.

Response: TCEQ rules at 30 TAC §205.4(d)(1), related to Authorizations and Notice of Intent (NOI), requires a general permit to describe the procedures for suspension of an authorization or NOI. An operator that has an authorization suspended may file a motion to overturn and ask the TCEQ's Commissioners to set aside the executive director's decision. See 30 TAC §50.139, related to Motion to Overturn Executive Director's Decision.

Comment: Harris County asks for clarification on Section II.G.2.(a), regarding how the determination is made that a site is consistent with applicable TMDLs.

Response: If an operator authorized under the CGP discharges to a segment that is impaired for a pollutant of concern and a TMDL has been adopted, then the discharge must comply with the approved TMDL and any Implementation Plan. If the TMDL and Implementation Plan determines that general permit coverage for construction sites is not adequately protective and that construction sites need to be authorized under an individual permit, then the discharge could not be authorized under the CGP. Similarly, if the TMDL and Implementation Plan determine that construction activities discharging to the affected water(s) must enact additional controls (e.g., implement specific BMPs or conduct analytical monitoring of the discharge), then the discharge could only be authorized under the CGP if the SWP3 is revised to include the required elements from the TMDL. If TCEQ determines that the elements are not implemented by the operator, then the TCEQ could deny or suspend authorization under the CGP. The CGP was revised to remove the term "implementation plan" in the two occurrences within the first sentence of the second paragraph of Section II.C.4.

Comment: Harris County disagrees with the inclusion of Section II.G.2.(c) and states that it is unnecessarily severe that a violation from any of its many, wide-ranging programs may disqualify it from coverage under the CGP and requests a measure of leniency from TCEQ.

Response: The language was included based on 30 TAC §205.4(d)(1), which requires the general permit to "describe the procedures for suspension of authorization and NOIs under a general permit." The specific conditions listed in the general permit at Section II.G.2.(c) are consistent with TCEQ rules at 30 TAC §205.4(d)(5); therefore, no changes were made.

Part III

Comment: SOS expresses concerns about operators not having any qualifications for developing and managing the SWP3 and states that individuals need to be certified or registered professionals (as appropriate) and complete training courses on SWP3 development and some sort of basic training for those who oversee construction site operators.

Response: In response to this comment and a previous comment in the "Definitions" section of the CGP, TCEQ revised Section III.F.7.(a) to clarify who is considered to be qualified to conduct inspections. However, TCEQ declines to require inspectors to be certified. The current CGP, as well as EPA's CGP, does not require a similar certification.

Comment: Fort Hood requests that TCEQ be as clear and consistent as possible when describing the purpose of the SWP3 and notes that, in the following sections of the permit, different terms are used, such as "prevent," "reduce," "eliminate," "minimize," "control," "regulate," and "to the extent:" Section I.B. (related to definition of BMPs), Section II.A.2.(b), Part III, Section III.F.2.(a), and Sections III.F.4.(b), (c), (d), and (e). In addition, Fort Hood states that the SWP3 document cannot "ensure the implementation of practices" nor "assure compliance," and recommends changing the last sentence of the first paragraph of Part III as follows:

The SWP3 must describe the implementation of practices that will be used to minimize to the extent practicable the discharge of pollutants in storm water associated with construction activity and non-storm water discharges described in Part II.a.3. in compliance with the terms and conditions of this permit.

Response: In response to the comments, Section III.F.2.(a)(iii) was revised to replace the term "limit" with "minimize." Sections III.F.4.(b), and III.F.4.(e) were revised to replace the term "reduce" with "mini-

mize" and the final sentence of the first paragraph of Part III was revised to state:

The SWP3 must describe the implementation of practices that will be used to minimize to the extent practicable the discharge of pollutants in storm water associated with construction activity and non-storm water discharges described in Part II.A.3. in compliance with the terms and conditions of this permit.

Comment: TxDOT comments that the first paragraph under Part III. requires that the SWP3 address "off-site material storage areas, overburden and stockpiles of dirt, borrow areas, equipment staging areas, vehicle repair areas, fueling areas, etc., used solely by the permitted project." TxDOT states that this appears to be inconsistent with Section II.A.2. (Discharges Eligible for Authorization), which limits when such off-site activities must or may be authorized in conjunction with the primary construction activity. TxDOT suggests replacing the language quoted above with "areas authorized under Part II.A.2." in order to avoid confusion.

Response: As stated in an earlier response, the provision regarding construction activities located within 1/4 mile was moved to the definition of "common plan of development."

Comment: SWS-Houston requests that Section III.A.1. of the draft permit be revised to reflect that including copies of each operator's NOI is equivalent to signing a shared SWP3, because Response Number 143 of the Executive Director's Response to Comments (RTC) for the existing CGP states that certification is not necessary as long as each operator signs an NOI and includes it in the SWP3. SWS-Houston requests that the term "participant" in Section III.A.1. be changed to "operator" or to "permittee," and comments that the term "participant" is not necessarily equivalent to the term "operator." Mesquite comments that TCEQ enforcement personnel currently interpret the requirement in Section III.A.1. to mean that the signed certifications on the NOIs or construction site notices, which are part of the SWP3, meet the signature requirement for a shared SWP3, and asks whether this is the intent in the draft permit. Mesquite further states that not allowing the NOI or construction site notice signatures to meet this requirement places a large burden on all cities that are preparing an SWP3 for a city project, as the city manager may not be readily accessible to sign multiple documents for all city projects of one acre or more.

Response: In the 2003 Response to Comments, Number 143, TCEQ clarified that an SWP3 does not have to be signed if it is for a single operator, because the certification on the NOI is sufficient to indicate that an SWP3 was implemented according to the CGP. However, the existing CGP does require shared SWP3s to be signed by each operator participating in the shared plan; and this requirement is continued in the renewed version of the permit. The need to sign a shared plan is important to show that each operator is aware of and agrees to the specific items regarding who is responsible for what is in the SWP3. If an operator chooses not to share an SWP3, then they may develop and implement their own without a separate signature requirement. TCEQ also notes that the signatory for any report required by the CGP, including the SWP3, can be delegated to a specific person or position per TCEQ rules at 30 TAC §305.128. This signatory authority designation letter can be submitted along with the NOI at any time thereafter.

TCEQ declines to remove the requirement for each operator in a shared SWP3 to sign the SWP3. However, the last sentence of Section III.A.1. was revised to address the comment regarding the term "participant" and now reads: "Each operator participating in the shared plan must also sign the SWP3."

Comment: TCB comments that the new requirement in Section III.B.2. related to operators with day-to-day control seems to require something of the operator that is not required to submit an NOI and believes that it may be confusing. TCB requests that the requirement be revised to apply to operators that do have to submit an NOI and comments that it may be a correction that was not carried all the way through the draft permit.

Response: TCEQ intends for all operators (including primary and secondary operators as provided in the revised definition for "operator) regulated under the CGP to comply with the terms and conditions of the CGP. If operators share an SWP3, then each operator, including the secondary operator, can easily identify who is responsible for compliance with certain portions of the SWP3. If each operator elects to prepare its own SWP3, then each operator will have to specifically address each permit condition.

Comment: Travis County recommends that Section III.D. of the draft permit be revised to provide explicit authority for local governments to review and approve or disapprove the SWP3.

Response: The CGP cannot provide entities with authority to conduct activities that they do not already have. If an entity seeks to regulate construction activities discharging into their drainage system, then they may do so to the extent allowable under state and local law.

Comment: Travis County requests that Section III.D. of the draft permit include a statement that local governments may require the SWP3 to be developed early in the planning phases of a construction project. Travis County comments that the draft permit does not require development and implementation of the SWP3 until construction is about to commence; and for that reason, BMPs are often developed as an afterthought and are often ineffective due to lack of forethought. Travis County states that erosion and sediment controls must be a prime consideration early in the planning process and that early consideration will influence project phasing, limits of disturbance, and selection of techniques, and will also minimize the potential for a significant discharge of pollutant from a regulated site.

Response: TCEQ thinks that the requirements in Section III.D. to develop an SWP3 that "provides for compliance with the terms and conditions" of the CGP are sufficient. If a construction site operator violates any terms or conditions of the permit, such as by use of inappropriate or ineffective BMPs, then they may be subject to enforcement actions. In addition, local authorities can require additional controls to the extent that they have such authority.

Comment: SWS-Royse requests clarification regarding the term "readily available" in Section III.D.1. of the draft permit.

Response: The SWP3 is the document that outlines how an activity will be conducted in a manner to reduce or eliminate pollution in storm water runoff. Therefore, it is reasonable and necessary that the document must be readily accessible to operators with the responsibility of implementing the plan. If the document is maintained on-site, the operator should be able to produce the SWP3 the same day as the request, preferably within two hours. If the SWP3 is maintained off-site, then it should be made available as soon as is reasonably possible. In most instances, it is reasonable that the document should be made available within 24 hours of the request. Many site investigations performed by TCEQ will be arranged in advance and, therefore, the SWP3 would be expected to be available at the time of the inspection.

Comment: Centex Homes comments that section III.D.1. provides requirements regarding on-site maintenance of a copy of the SWP3, but notes that, during land development, it is typical not to have a construction trailer on site. To address that situation, Centex Homes requests that TCEQ add the following sentence as the second sentence of Section III.D.1.: "The SWP3 may be kept in the vehicle of the construction manager/site foreman."

Response: TCEQ does not believe that a change is required in order to allow the SWP3 to be available in a vehicle if that location otherwise meets the existing permit requirements of being available "on site," or if no on-site location, then with a site notice indicating the location of the plan if off site. If the off site location is a vehicle, then it would be necessary to also include the contact information of the person holding the plan.

Comment: TxDOT suggests that TCEQ replace the word "notice" with "notices" in the third and fourth sentences of Section III.D.2. to clarify that the posting location descriptions apply to the NOI as well as to the site notice.

Response: In response to the comment, the requested changes were made.

Comment: SWS-Houston comments that the requirement list in Section III.D.2. to utilize Attachment 3 for large construction sites is inconsistent with the Fact Sheet language, which states that the operator is not required to use the notice provided in the permit. SWS requests that certification of the site notice be waived, as it duplicates the certification requirement on the NOI. Tarrant County comments that the references in Sections II.D.7. and III.D.2. of the general permit, and on Page 4, item 10 and page 11, item S of the fact sheet, regarding where a large construction site may need to post a construction site notice either in addition to the NOI as being the operator of this site and working on this site, or possibly without being required to submit an NOI. Tarrant County comments that the requirement is confusing because in one instance an operator needs a signatory requirement to the level of application signatory, but that there are other situations in the fact sheet where the site notice is said to only require information in addition to the NOI, which already has that signature requirement. Tarrant County suggests adding another attachment to clarify this situation.

Response: In response to the comments, the TCEQ revised the Fact Sheet language (Section IV.A. and V.S.) to clarify that all operators regulated under the CGP must post a specific site notice in TCEQ format. A new site notice was added as Attachment 4, for primary operators of large construction sites (those that are required to submit an NOI). Attachment 4 does not require a signatory certification because the NOI contains the appropriate signatures. Attachment 3 was revised to clarify that it applies only to secondary operators of large construction activities; and the signature requirement was retained, as it was also retained for the small construction site notices.

Comment: Harris County questions the language in Section III.D.2. related to an operator of a large construction activity that is not required to submit an NOI. Harris County asks if the operator required to post a site notice according to Section II.D.1., 2, or 3. of the permit refers to an owner of a property that does not have control over the plans and specifications or over the day-to-day activity for a project being constructed on the owner's property. Harris County comments that, if that is the case, then earlier sections of the permit and the flowchart imply that the owner is not the "operator" and that Section II.D.2.(b) would not apply. Therefore, Harris County requests clarification throughout the permit regarding the responsibilities of the landowner.

Response: If a landowner meets the definition of "operator" as provided in the revised definition in the new CGP and as discussed in previous comments related to the definition for "operator," then the landowner would be required to comply with the CGP. In many cases, the landowner would be considered a "secondary operator" and would not be required to submit an NOI.

Comment: Mesquite comments that the language in Section III.D.2.(b) and on Attachment 3 (the Large Construction Site Notice) do not agree with each other. Mesquite states that Section III.D.2.(b) requires the "name and telephone number" of the operator, but the site notice requires the "contact" name and number. Mesquite states that most operators are companies and suggests requiring the company name, contact name, and contact phone number.

Response: In response to the comment, Section III.D.2.(b) of the CGP was revised to replace the requirement to include "the name and telephone number of the operator" with "the operator name, contact name, and contact phone number. Accordingly, a new row of information was added to the site notices to include the "operator name."

Comment: SAWS requests that TCEQ remove the word "significant" in Section III.E.1. because the term allows operators to quantify a pollutant's effect on discharges and then leaves the term open to interpretation. SAWS comments that any effect to the discharge of a pollutant should be revised in the SWP3, regardless of quantity.

Response: This item was not revised, as the language is continued from the existing CGP and is also consistent with EPA's CGP.

Comment: Centex Homes comments that Section III.F.1.c., which requires the SWP3 to include a description of the intended schedule or sequence of soil disturbing activity is unclear regarding what level of detail the SWP3 narrative must include about this schedule. Centex Homes further notes that the schedule or sequence may change due to weather or third parties and requests that the draft permit be revised to clarify that it would be sufficient to include a narrative and reference to documents that generally describe the timing, as opposed to requiring specific dates. Centex Homes requests that this section be revised to read as follows: "(c) a general description of the intended schedule or anticipated sequence of activities that will disturb soils for major portions of the site; . . .."

Response: TCEQ disagrees that a change is needed to the existing language in order to allow an operator to provide a generalized schedule of planned activities.

Comment: TxDOT asks for clarification regarding what types of field changes warrant revising the SWP3 site map (see Section III.F.1.(g)), and suggests that TCEQ either provide guidance on this issue in the response to comments, or include the following sentence in Section III.E. of the CGP:

Normal maintenance activities and minor adjustments to control measures may be addressed in the SWP3 (e.g. inspection reports) and do not normally require an update to the site map.

Response: If any information listed in Section III.F.1.(g) changes, then the site map would need to be updated. This would include, but is not limited to, changes to the planned area of soil disturbance, changes in locations and types of structural controls, revisions to authorized construction support activities, and vehicle washing areas. This would not necessarily include changes such as the temporary relocation of trash bins or portable toilets that are part of normal activities. No changes were made to the permit language.

Comment: TxDOT comments that it supports limiting the information required under paragraph (v) to that under the applicant's authorization, but notes that paragraph (ix) appears to repeat paragraph (v) without that limitation. Therefore, TxDOT requests that TCEQ delete item III.F.1.(g)(ix). Fort Hood recommends combining items (v) and (ix) of Section III.F.1.(g), related to "construction support activities," and provides the following example of possible language that could be used:

locations of off-site construction support activities that are authorized under the permittee's NOI, including concrete or asphalt batch plants, or material, waste, borrow, fill, or equipment storage areas.

Response: In response to the comments, TCEQ deleted item (ix) and revised item (v) as follows to include both on-site and off-site support

activities: "locations of construction support activities, including off-site activities, that are authorized under the permittee's NOI . . .."

Comment: Centex Homes requests that Section III.F.1.g.ii. be revised to include the additional parenthetical to simplify the designation process for sites where most or all of the area will be disturbed: "areas where soil disturbance will occur (a statement that "all areas in the map will be disturbed unless otherwise noted" is sufficient); . . ..

Response: TCEQ agrees that the operator may include a statement on the map noting that all land shown will be disturbed and that such a statement would meet this requirement. However, no changes were made to the language in this section.

Comment: SAWS requests that TCEQ add the word "maximum" before "extent practicable" in Section III.F.2.(a)(i), because the word "maximum" quantifies the level of design to retain sediment on site, limit the off-site transport of litter, construction debris, and construction materials.

Response: TCEQ declines to make the change, as the current language is consistent with the existing CGP and with EPA's CGP. The "maximum extent practicable" standard is a federal standard that is specific to discharges originating from regulated MS4s.

Comment: SAWS requests that TCEQ replace the term "interim" to "temporary" in the first sentence of Section III.F.2.(b), and further states that there should be a similar replacement of terms throughout the draft permit because there is no definition for "interim stabilization" in the permit. However; there is a definition for "temporary stabilization."

Response: TCEQ agrees with the comment, and has changed the word "interim" to "temporary" in Sections III.F.1.(g)(iv) and III.F.2.(b) of the CGP.

Comment: SCIECA requests that perimeter controls be added to Section III.F.2.b.(i), and states that, as currently written, it is in conflict with the definitions in Part I of the permit. SCIECA comments that, to remove sediment from storm water, you need to either utilize filtration or detention.

Response: As stated in an earlier response, the definition of "temporary stabilization" was changed to remove perimeter controls from the list of examples; and a provision was included in the definition of "final stabilization" to allow perimeter controls in certain situations where homebuilders transfer ownership of a home. In response to this comment, TCEQ added the following paragraph as a new Section III.F.2.(b)(iii)(D), in order to allow the use of perimeter controls and other structural controls as an alternative to temporary erosion control, where the operator can show that temporary erosion controls are not feasible and that the chosen perimeter controls would provide equivalent on-site retention of sediment:

(D) In areas where temporary stabilization measures are infeasible, the operator may alternatively utilize temporary perimeter controls. The operator must document in the SWP3 the reason why stabilization measures are not feasible, and must demonstrate that the perimeter controls will retain sediment on site to the extent practicable. The operator must continue to inspect the BMPs at the frequency established in Section III.F.7.(a) for unstabilized sites.

Comment: Fort Hood notes that vegetative buffer strips are listed as an erosion control in Section III.F.2.b.(i) and that they are listed multiple times as a sediment control in this permit, as well as in U.S. EPA's Menu of Storm Water BMPs.

Response: In the existing CGP, vegetative buffer strips are listed as a type of stabilization practice and as a type of sediment control that may be used. EPA's National Menu of Storm Water BMPs (see http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm) describes vegetated buffers as areas of natural or established vegetation that are maintained to protect the water quality of neighboring areas. In addition, while buffer zones primarily act to slow storm water runoff, as well as to provide an area where runoff can permeate the soil, contribute to ground water recharge, and filter sediment, the action of slowing runoff also helps to prevent soil erosion and streambank collapse.

Comment: Fort Hood requests that TCEQ define the term "establishment" as it relates to temporary or permanent vegetation in Section III.F.2.b.(i), so that operators and inspectors will be able to determine whether grass that is growing within disturbed soil is appropriately dense, uniform, etc.

Response: TCEQ declines to revise this section, which is consistent with the existing CGP and EPA's CGP. EPA menu of BMPs includes detailed information and resources regarding the establishment of temporary or permanent vegetation from seeding. In the definition for "final stabilization," the CGP clarifies that, in order to terminate permit authorization, there must be a uniform perennial vegetative cover that has a density of at least 70% of the density of the vegetation that was present prior to commencing construction.

Comment: Harris County comments that the requirement to list the dates of various construction activity in Section III.F.2.b.(ii) is unreasonable due to the dynamic nature of construction affecting the timeline (e.g., financing, weather, building permitting) and believes that the current requirement to describe the intended schedule or sequence of major activities is sufficient for effective Harris County enforcement. With the current language, Harris County comments that it would have to issue notices of violation to permittees for having incorrect dates listed in their SWP3s and would rather focus its limited resources on enforcing activities that it believes pose a greater risk to the environment.

Response: TCEQ declines to revise the permit, as the language is continued from the existing CGP and is also consistent with EPA's current CGP. Permittees may update their SWP3 to reflect changes to schedules.

Comment: Fort Hood asks in regards to Section III.F.2.b.(ii)(C) whether it would also be appropriate to note the dates when temporary stabilization measures are initiated in order to evaluate compliance with the CGP.

Response: In response to the comment, TCEQ revised Section III.F.2.(b)(ii)(C) to remove the term "permanent." This change is consistent with the existing TPDES CGP and with EPA's current CGP. This also allows the operator to show that the requirements of Section III.F.2.(b)(iii) related to the timing of temporary stabilization measures have been met.

Comment: Fort Hood asks that TCEQ define the term "initiated" as used in Section III.F.2.b.(iii) or provide further guidance or examples as to how it would apply for some typical controls. Specifically, Fort Hood asks whether the term "initiated" includes the spreading of seed, even if the vegetation will not grow for several weeks. In addition, Fort Hood asks whether it is acceptable to apply rolled erosion control products (RECP) to exposed soils 13 days after completion of construction activities in the area, when it may take three more weeks to complete the installation.

Response: The permit requires that temporary stabilization measures be initiated within 14 days. If the seeding or the RECP is applied throughout the disturbed area within the 14 day timeframe, then the requirement has been met. The operator must maintain the BMPs to insure that they are successfully established and function as intended for erosion control over the disturbed area.

Comment: In Sections III.F.2.(b)(iii)(A), (B), and (C), SAWS requests that TCEQ replace the term "construction activity," with "legitimate construction activity," and to add a definition for the new term. To support this request, SAWS states that operators define "construction activity" as any activity on the site in order to constitute that they have exercised "construction activity on the site within 21 days" to avoid installing temporary stabilization measures. For example, SAWS states that a contractor may send a front end loader out to a site and back-drag existing graded soil thereby increasing the likelihood of sediment discharge from the site due to exposed, unprotected soils. SAWS states that, by adding the word "legitimate" to "construction activity", the permit would ensure that an operator's activity would not be a useless activity performed simply to avoid providing temporary stabilization. SAWS included the following proposed definition:

Legitimate Construction Activity: a construction activity performed by an operator, contractor or builder which results in a substantive, tangible product that has an economic value to the development.

Response: The CGP requires that temporary stabilization be initiated within 14 days for any portion of a construction site where land disturbance has temporarily or permanently ceased. If the operator will recommence construction within 21 days, then the temporary stabilization is not required in those areas. No changes were made to the permit, because TCEQ believes that the existing language allows an inspector to issue a violation related to the SWP3 if the activities at the site do not meet the requirement of Part III of the CGP related to ensuring the implementation of practices to reduce the pollutants in discharges associated with the construction site.

Comment: Centex Homes requests that TCEQ clarify Section III.F.2.b.(iii) with respect to what constitutes cessation of construction activities. Centex Homes notes that the issue of stabilization is problematic where the site is part of a larger common plan of development such as a house within a residential development. Centex Homes asks whether a home that has been completed must be stabilized if the lot is awaiting fencing and installation of a sprinkler system, but that it is known that activity on the lot will cease for 40 days.

Response: In the example provided, temporary stabilization would be required of the operator for the individual lot. If temporary stabilization were not feasible, then the operator could establish perimeter controls or other structural controls that are determined to be as effective as erosion control would be (see the new Section III.F.2.(b)(iii)(D) related to temporary stabilization, and the revised definition of "final stabilization").

Comment: Centex Homes requests that TCEQ clarify Section III.F.2.b.(iii) with respect to whether it is necessary to undertake stabilization even if source control BMPs or sediment control BMPs remain in place to control sediment from leaving an area where construction activities have ceased.

Response: Stabilization measures are required for disturbed areas where construction has temporarily ceased. Where stabilization is not feasible, an operator may utilize structural controls to handle sediment, where those controls are found to be able to handle the same amount of sediment that a stabilization measure would have prevented from being transported in the first place (see the new Section III.F.2.(b)(iii)(D) of the general permit).

Comment: SCIECA states that Section III.F.2.b.(iii)(C) seems to indicate that, if a site is experiencing drought, then stabilization is not required and asks whether this applies to both final stabilization as well as temporary stabilization. SCIECA states that, without temporary stabilization in place, sediment will be washed off site if it rains and notes that many of the types of temporary stabilization do not require water and could be accomplished during dry periods. SCIECA states in regards to Section III.F.2.b.(iii)(C), methods of temporary stabilization could be added as more information becomes available. Finally, SCIECA asks how many storm events would need to occur before the area is considered to be out of drought conditions and stabilization installed.

Response: Temporary stabilization in arid or semi-arid areas, or in areas experiencing drought is required as soon as practicable. It may be necessary to utilize non-vegetative stabilization if vegetative controls are not practicable. In response to the comment, the following sentence was added to the end of Section III.F.2.(b)(iii)(C):

Where vegetative controls are not feasible due to arid conditions, the operator shall install non-vegetative erosion controls. If non-vegetative controls are not feasible, the operator shall install temporary sediment controls as required in Paragraph (D) below.

Comment: SCIECA asks who determines drought status as described in Section III.F.2.b.(iii)(C) and asks whether TCEQ will post a list of counties that it considers to be in drought condition.

Response: The CGP does not include specific definition of "drought." Information on droughts, including links to other government agency resources, is available on TCEQ's web site at: http://www.tceq.state.tx.us/nav/util_water/drought.html

Comment: SCIECA suggests that the following language be added as a new item under (D) of Section III.F.2.(b)(iii) and stated that TCEQ may want to only allow this for a limited time frame, such as 90 to 180 days:

If the sediment control (sic) included in the storm water pollution prevention plan (SWP3) are developed using a design methodology which take into account the water volume and/or peak flow load based on a 2 year 24 hour storm, the sediment load based on Modified Universal Soil Loss Equation (MUSLE) and the calculation are include (sic) in the plan the site would be consider (sic) to have temporary stabilization by means of the existing structural erosion and sediment controls.

Response: TCEQ declines to make the requested change but, in response to an earlier comment, a new Paragraph (D) was added to Section III.F.2.(b)(iii) related to the use of perimeter controls where temporary erosion controls are infeasible.

Comment: SAWS requests a new item (D) in Section III.F.2.(b)(iii). SAWS states that an operator will often obtain permit coverage for an entire development and will then grade the entire development and install primary infrastructure (roads, utilities, and drainage). Only then will the operator focus construction activity (such as home building) on a small, specific section of the development. SAWS states that this practice leaves large areas of exposed soils with minimal BMPs and a higher probability for runoff. Specifically, SAWS requests the following language be added at item (D):

stabilization measures shall be initiated in all inactive areas of the development by the 14th day after construction activities have temporarily or permanently ceased and where those inactive areas will not engage in legitimate construction activity for an indefinite period of time (exceeding 21 days).

Response: TCEQ believes that Section III.F.2.(b)(iii), which requires stabilization measures in "portions of the site where construction activities have temporarily or permanently ceased. . . " adequately addresses this concern. Therefore, no additional changes were made.

Comment: Fort Hood states that Section III.F.2.(c) only includes design parameters for the sediment basins. Fort Hood believes that the holding time or hydraulic detention time of the water in the basin is just as important to the ultimate success or failure of the basin as a sediment control device. Fort Hood recommends that TCEQ provide a minimum

hydraulic detention time to assist in the proper design and inspection of this type of control.

Response: TCEQ believes that the existing requirements for the sediment basins are adequately protective, and no additional changes are proposed.

Comment: TxDOT comments that work involving placement of dredge or fill material in Waters of the United States is regulated under §404 of the Clean Water Act (CWA) by the United States Corps of Engineers and requests clarification in the CGP for work occurring in waters of the United States that is authorized under a §404 permit. As an example, TxDOT notes that Section III.F.2.(c)(1)(D) requires sediment controls at all down slope boundaries, which would require placing a control at a downstream point in the creek if work was actually being performed in a creek; and this would typically be a violation of the CWA, §404 permit. TxDOT requests clarification regarding appropriate CGP permit requirements when compliance with the CGP may result in a violation of another permit (e.g. for work that is authorized by a CWA, §404 permit).

Response: The CGP cannot provide authority for an operator to use property or conveyances that are owned or operated by another entity, including water in the state. If construction occurs immediately adjacent to water in the state, then there may be situations in which perimeter controls are not feasible; and the operator should focus on source control to minimize the discharge of pollutants from the site into surface waters. According to the Texas Parks and Wildlife Department (TPWD) Code, the TPWD has authority over all activities that occur on the "beds and bottoms" of public rivers, as well as the products of the beds and bottoms of the public rivers (including the mining of sand, gravel, mud, and shell). If construction is occurring completely within water of the state under a CWA, §404 permit, then the TCEQ does not have jurisdiction over the activity; and the operator would need to comply with the requirements of CWA, §404 authorization and with TPWD requirements. However, if the construction activity is occurring both within a water in the state, such that a CWA, §404 permit is required, and on land that does not require §404 authorization, then the portion of the construction activity not covered under the §404 authorization would require CGP coverage if the area disturbed exceeded one acre.

Comment: SWS-Houston comments that calculations required in Section III.F.2.(c) regarding basin capacity cannot always be performed prior to implementing the SWP3. SWS-Houston notes that operators with day-to-day operational control may not be able to construct sediment basins due to contractual limitations and that it may be impractical to measure the capacity of basins that were designed in the field. Therefore, SWS-Houston requests that the new documentation requirement related to basin calculations and feasibility be limited to those operators with controls over the plans and specifications that are required to submit an NOI, rather than the day-to-day operators. SWS-Houston also requests that the TCEQ add language to the CGP to ensure that the construction of sedimentation basins or equivalent measures is started as early in the project as needed to effectively manage sediment runoff.

Response: Section III.B.1.(a) requires primary operators with control over construction plans and specification and secondary operators to ensure that project specifications allow for adequate BMPs, and the responsibility for appropriately sizing the ponds may be included in their SWP3 or portion of SWP3. However, some day-to-day operators may also have the ability to make decisions on the sizing of ponds; and this would be addressed under Section III.B.2.(a). No additional changes were made to the CGP.

Comment: Harris County requests removal of the requirement in Section III.F.2.(c)(1)(A) to construct a sedimentation basin, and states that, while a sedimentation basin is effective at improving storm water quality, they are often not feasible, particularly in areas with flat terrain such as the Gulf Coast or for linear projects. Harris County adds that requiring sedimentation basins may conflict with building requirements from other local jurisdictions.

Response: TCEQ declines to remove this provision. Sedimentation basins are useful to capture sediment from a construction site by allowing it to settle out from pooled water prior to the water being discharged. Where a sedimentation basin is not feasible due to acreage or geographical restrictions, safety concerns, or other reasons, then it is appropriate to utilize alternative BMPs, as long as the operator states the reason(s) that the sedimentation basin is infeasible as required in Section III.F.2.(c)(1)(C).

Comment: Harris County comments that Sections III.F.2.c.(1) and (2) should be changed to (i) and (ii) to be consistent with the rest of the section.

Response: The noted correction was made to the draft permit.

Comment: SCIECA comments that the engineering community would have difficulty in complying with Section III.F.2.(c)(1)(C) because it is an open-ended requirement. TCB comments that it is somewhat onerous to require documentation of why a sedimentation basin was not feasible. SCIECA further states that an engineer may determine that it is not feasible to construct a detention pond based on the criteria listed in the draft permit but that the engineer and the company may be subject to fines, lawsuits, and enforcement if an inspector determines that the pond was feasible. In addition, SCIECA states that the provision does not state what in particular would be an appropriate substitute for a pond that was deemed infeasible. SCIECA requests that the permit contain specific design standards rather than use subjective requirements. SCIECA also comments that the Section III.F.2.(c)(1)(D), already requires perimeter controls. TCB comments that it does not believe that EPA required such documentation in its CGP. Harris County requests removal of the requirement in Section III.F.2.(c)(1)(C) to document the reason that an operator may deem sedimentation basins as infeasible, because there are no guidelines describing the reasoning process and local authorities would not be able to enforce this provision.

Response: TCEQ believes that it is necessary for an operator to document why this particular provision cannot be met and does not believe that the requirement to document the reason is overly burdensome. The existing CGP includes a requirement to construct a sedimentation pond, and also includes a requirement to use equivalent control measures if "sediment basins are not feasible." The only difference between the existing CGP and the draft permit is that the operator must now document the reason that the basin is not feasible. TCEQ believes that the additional requirement does not affect the responsibility of the operator to be able to demonstrate to an inspector why the sedimentation basin was not constructed. Also, TCEQ does not want an operator to simply choose not to construct a sedimentation pond for purposes of convenience rather than feasibility. No changes were made to the draft permit.

Comment: Fort Hood asks whether "equivalent control measures" in Section III.F.2.(c)(1)(C) are mandatory or whether they are optional if the operator can justify that they are not attainable. In addition, Fort Hood asks whether the same criteria should be used to determine "attainability" as "feasibility" in this section.

Response: Equivalent control measures are required if a sedimentation basin is infeasible. In response to the comment, the term "where attainable" was removed. This change is consistent with the existing CGP language.

Comment: SCIECA asks whether the perimeter controls required in Section III.F.2.(c)(1)(D) are supposed to be equivalent to a detention pond (in the case where a detention pond is determined to be infeasible), or the equivalent to a silt fence or vegetative strip. Further, SCIECA asks how one is to determine whether controls are equivalent. SCIECA also asks that TCEQ clarify its requirements regarding the limit to how much sediment must be retained on site and states that city inspectors will sometimes require multiple rows of silt fences to account for the controls being knocked down during a storm event. SCIECA notes that often the site engineer will determine that one thing is appropriate, but it may conflict with the inspector's view. In addition, SCIECA requests that TCEQ replace the requirement to construct a detention pond with a specific goal or limit. SCIECA believes that the requirement is too restrictive, and though it comes from the federal permit, it only provides one clear option to the problem. SCIECA states that, if the operator determines that the sedimentation pond is not feasible, then the operator does not have clear guidance on how to choose alternative BMPs. SCIECA comments that this change would make it easier for the regulated community to understand and implement and that it will be easier for TCEQ to enforce, while still meeting the goals of reducing sediment from construction sites. In addition, SCIECA requests that TCEQ address other areas in the permit that are left to individual judgment and instead provide clear criteria that can be met.

Response: Perimeter controls are required in addition to the required sediment basin. As stated in previous responses, the TCEQ declines to add a specific design requirement for BMPs or to include prescriptive guidance on selecting BMPs in lieu of a sediment basin. There are several resources available to help choose BMPs, including EPA's Menu of Storm Water BMPs discussed in previous responses. In response to this comment and in order to clarify the requirements for sites with drainage areas of ten or more acres, Section III.F.2.(c)(1) was reorganized as follows:

(1) Sites With Drainage Areas of Ten or More Acres

(A) Sedimentation Basin(s)

(i) A sedimentation basin is required, where feasible, for a common drainage location that serves an area with ten or more acres disturbed at one time. A sedimentation basin may be temporary or permanent, and must provide sufficient storage to contain a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained. When calculating the volume of runoff from a 2-year, 24-hour storm event, it is not required to include the flows from off-site areas and flow from onsite areas that are either undisturbed or have already undergone permanent stabilization, if these flows are diverted around both the disturbed areas of the site and the sediment basin. Capacity calculations shall be included in the SWP3.

(ii) Where rainfall data is not available or a calculation cannot be performed, the sedimentation basin must provide at least 3,600 cubic feet of storage per acre drained until final stabilization of the site.

(iii) If a sedimentation basin is not feasible, then the permittee shall provide equivalent control measures, until final stabilization of the site. In determining whether installing a sediment basin is feasible, the permittee may consider factors such as site soils, slope, available area, public safety, precipitation patterns, site geometry, site vegetation, infiltration capacity, geotechnical factors, depth to groundwater, and other similar considerations. The permittee shall document the reason that the sediment basins are not feasible, and shall utilize equivalent control measures, which may include a series of smaller sediment basins.

(B) Perimeter Controls: At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

Comment: SCIECA comments that a company that is hired to install the erosion and sediment controls (see Sections III.F.2.(c)(1)(D) and III.F.2.(c)(2)(B)) that have been approved by the design engineer will often know that the planned controls will not work; but they are not allowed to make changes to the plan because they are not engineers and the landowner does not want to spend more money. In addition, the city will be upset because sediment has left the site; but the city can't tell the owner what to do before it rains, since the city would then be taking control over the plans and specifications and can only require changes to the plans when they see a violation. SCIECA asks whether TCEQ can require the engineers to prepare better plans.

Response: Section III.E.3. of the CGP requires updates to the SWP3 to address ineffective BMPs. Section III.7.(a) requires that controls be periodically inspected for effectiveness and Section III.6.(b) requires that an ineffective BMP be replaced or modified. In the example previously provided, the landowner appears to have operational control over the construction plan or specification that is needed to comply with a permit condition and would be considered an operator. If an operator did not utilize effective BMPs to minimize the discharge of pollutants associated with construction activity (see Section III.F.2.), then the operator would be in violation of the CGP and may be subject to violations and enforcement action. In the case of the city in the example previously provided, if the city is the landowner but did not have any authority to direct operators at the site to implement different BMPs, then the city would not be a primary operator and may not be a secondary operator. If the city is not the landowner but inspects the site as part of its construction runoff program, then the city could enforce local ordinances related to construction site storm water runoff without being considered an operator.

Comment: Fort Hood asks whether the use of the word "alternatively" in Section III.F.2.(c)(2)(C) related to sedimentation basins for sites with drainage areas less than ten acres means that "silt fences, vegetative buffer strips, or equivalent sediment controls" would not be required, if a properly sized sediment basin were used on site with drainage areas of less than ten (10) acres.

Response: If a sedimentation basin is constructed to retain the amount of runoff resulting from a 2-year, 24-hour storm event or to retain a minimum of 3,600 cubit feet of storage per acre drained, then the perimeter controls would not be required. In order to better clarify the provision, Section III.F.2.(c)(2) was reorganized as follows:

(i) Controls for Sites With Drainage Areas Less than Ten Acres:

(1) Sediment traps and sediment basins may be used to control solids in storm water runoff for drainage locations serving less than ten (10) acres. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries of the construction area, and for those side slope boundaries deemed appropriate as dictated by individual site conditions.

(2) Alternatively, a sediment basin that provides storage for a calculated volume of runoff from a 2-year, 24-hour storm from each disturbed acre drained may be utilized. Where rainfall data is not available or a calculation cannot be performed, a temporary or permanent sediment basin providing 3,600 cubic feet of storage per acre drained may be provided. If a calculation is performed, then the calculation shall be included in the SWP3.

Comment: Centex Homes comments that there has been inconsistent enforcement throughout the country related to off-site vehicle tracking of sediments and asks for clarification regarding how much sediment may leave the site before triggering a violation of Section III.F.4.(a). Fort Hood asks how much "off-site vehicle tracking of sediments and generation of dust" is acceptable.

Response: TCEQ declines to include a specific criterion with respect to the amount of sediment that would be considered a violation of this permit but notes that the requirement is to minimize those wastes. The revised language in the renewed CGP is consistent with the existing CGP, but TCEQ revised this item to include the "extent practicable" requirement that is present in EPA's CGP.

Dust and dirt-tracking can be minimized by measures such as providing gravel or paving at construction entrances and exits, parking areas and unpaved transit ways on the site carrying significant amounts of traffic (for example, more than 25 vehicles per day); providing entrance wash racks or stations for trucks; and performing street sweeping. The first sentence of Section III.F.4.(a) was revised as follows: "Permittees shall minimize, to the extent practicable, the off-site vehicle tracking of sediments and the generation of dust . . .."

Comment: Harris County requests that Sections III.F.4.(d) and III.F.4.(e) be revised to add the following sentence regarding receiving water quality, to ensure that velocity dissipation devices function properly, and to address pollutants associated with dewatering activities: "Such discharges shall not cause or contribute to degradation in quality or condition of the receiving water course.

Response: TCEQ declines to add the requested language, because the current language is consistent with the existing CGP. TCEQ notes that Section II.B.3. of the CGP, related to Compliance with Water Quality Standards, prohibits any discharges that would cause or contribute to a violation of water quality standards from obtaining coverage under the CGP.

Comment: Harris County requests that TCEQ add a definition for "outfall channel." In addition, Harris County comments that Section III.F.4.(d) is unclear regarding whether the phrase "...along the length of any outfall channel..." is meant as internal site drainage upstream of an outfall or if it also includes the receiving water course (i.e., downstream of the outfall). Harris County states that, if the intention is to include the receiving water course, then the site operator would need to coordinate the installation of velocity dissipation devices with the owner of the receiving water course, since they are often different entities. Finally, Harris County comments that velocity dissipation devices should not be required along the length of an outfall channel except where they are needed and noted that a plastic-lined or concrete-line ditch may not require velocity dissipation devices, while an earthen channel may. Harris County requests that the phrase "as needed" be added to Section III.F.4.(d) as follows: "Permittees shall place velocity dissipation devices at discharge locations and along the length of any outfall channel as needed to provide . . .."

Response: TCEQ declines to add the phrase "as needed" because the existing language is consistent with the current CGP and with EPA's CGP. In response to the comment, Section III.F.4.(d) was revised as follows to include clarification that an outfall channel includes the storm water conveyance upstream of the outfall:

(d) Permittees shall place velocity dissipation devices at discharge locations and along the length of any outfall channel (i.e., runoff conveyance) to provide a non-erosive flow velocity from the structure to a water course, so that the natural physical and biological characteristics and functions are maintained and protected.

Comment: Harris County requests that the word "appropriate" be added to Section III.F.4.(e) so that the beginning of the requirement reads as follows: "Permittees shall design and utilize appropriate controls . . .."

Response: TCEQ revised the language as requested.

Comment: Travis County recommends that Section III.F.5. be revised to clarify that local governments may specify requirements for the SWP3 in their local development ordinances and MS4 plans and that the local governments may require the SWP3 to be submitted early in the planning process.

Response: TCEQ believes that Section III.F.5.(a) provides sufficient information regarding the ability for local governments to require additional information in their required site plans.

Comment: Regarding Section III.F.6.(a), SCIECA asks what would be considered impracticable with respect to maintenance of BMPs prior to the next rain event. For example, would it be appropriate to say that it was too muddy or that a person could not be hired in time to conduct the maintenance prior to the next rain event? SCIECA further asks whether it is acceptable to perform the maintenance within seven days of the inspection and states that this has been accepted in the past.

Response: While site conditions such as mud could preclude immediate maintenance activities, it would generally not be appropriate to state that maintenance was infeasible due to the inability to hire maintenance personnel. The operator certifies on the NOI or the site notice that the SWP3 for the project meets the requirements of the permit, and it is up to the operator to insure that appropriate personnel are available to conduct required maintenance. Maintenance of BMPs within seven days may be appropriate to maintain the continued effectiveness of the BMP, if it cannot be conducted prior to the next rain event. However, TCEQ notes that the last part of this section as well as the next section requires controls to be replaced or corrected immediately in some cases and as soon as practicable in others.

Comment: Centex Homes comments that Section III.F.6.(a) of the draft permit is unclear as to when a violation occurs regarding maintenance of BMPs and requests that the draft permit be revised to clarify that a violation does not occur simply because a BMP is in need of repair but only after the damage has been discovered and the permittee fails to address the problem within the framework established in the permit. Centex Homes requests that Section III.F.6.(b) be revised to add the following language at the end of the existing sentence:

A violation occurs if the permittee: (1) fails to inspect controls in accordance with the permit requirements, (2) fails to identify damage to a control during an inspection, or (3) fails to conduct a repair within a reasonable time after the need for the repair is discovered during an inspection.

Response: TCEQ disagrees that additional language is needed to indicate when a violation of this section occurs.

Comment: Centex Homes comments that the draft permit does not address when trapped sediment must be removed from a sediment fence and requests that the following sentence be added to the end of the existing sentence in Section III.F.6.(c): "For a sediment fence, the trapped sediment must be removed before it reaches 50% of the above-ground fence height."

Response: TCEQ agrees that clarifying the silt fence language would be helpful and added the following sentence to the end of Section III.F.6.(c):

For perimeter controls such as silt fences, berms, etc., the trapped sediment must be removed before it reaches 50% of the above-ground height.

Comment: Harris County comments that the proposed requirement (see Section III.F.6.(d)) to remove sediment accumulations from a receiving water does not take into account the fact that the construction site operator does not own or maintain the receiving waters and that it appears to authorize a permittee to perform work in a receiving water course. Harris County urges TCEQ to revise the language to address the authority of other governmental entities and to require permittees

to work with the governmental entity charged with the maintenance obligations of a receiving water course to come up with a plan to clean up off-site sediment impacts. Harris County also notes that, in some cases, it may be preferable to leave the sediment in place, if the removal process would cause more harm than good.

Response: Page 1 of the CGP includes language regarding the inability of this permit to allow anyone to use private or public property to convey storm water and that the operator must acquire any needed property rights to use the discharge route. If removing sediment would cause more harm, then the operator would need to show that removal would not minimize off site impacts. TCEQ agrees that additional clarification in this section would be helpful and revised Section III.F.6.(d) as follows to address the comment:

(d) If sediment escapes the site, accumulations must be removed at a frequency that minimizes off-site impacts, and prior to the next rain event, if feasible. If the permittee does not own or operate the off-site conveyance, then the permittee must to work with the owner or operator of the property to remove the sediment.

Comment: Centex Homes and SOS requests that TCEQ provide inspection report forms for the inspections required in Section III.F.7. Centex Homes states that uniform reporting forms will help the regulated community be consistent in conducting inspections and SOS states that such forms would help to standardize inspections.

Response: Currently TCEQ's Small Business & Local Government Assistance Program has developed report forms as part of its draft SWP3 template (see http://www.tceq.state.tx.us/assistance/sblga/sw.html#cons). These forms meet the requirements of the CGP. However, TCEQ declines to require a specific format for the report.

Comment: Greg Mast comments that, when there are very frequent rainfall events, getting your site inspected and any damaged controls repaired prior to the next rain event is often problematic. SOS states that Section III.F.7.(a) of the draft permit only provides for inspections once every 14 days or after the end of a storm event of one-half inch or greater and that the permit provides an alternative of once per week. SOS states that the greatest sediment discharge from construction sites occurs during rainfall events and requests that TCEQ include the following inspection requirements, which it states is from a draft requirement in California's proposed CGP:

The discharger shall perform inspections and observations weekly, and at least once each 24-hour period during extended storm events to identify BMPs that need maintenance or failed to operate as intended.

Response: TCEQ declines to revise this requirement, which is continued from the existing CGP and that is consistent with EPA's CGP. The purpose of the inspection is to determine how the SWP3 is functioning and to make timely improvements and repairs; and the TCEQ believes that the existing frequency is sufficient to address these issues.

Comment: TxDOT comments that the term "seasonal arid period," which is used in Section III.F.7.(a)) is not defined in the draft permit while the terms "arid" and "semi-arid" areas are defined. TxDOT comments that "seasonal arid period" implies a period of consecutive months that receive less rainfall than others. TxDOT requests guidance on how the "seasonal arid period" should be determined if the intention is to allow monthly inspections only for a portion of the year in arid and semi-arid areas. Further, if the intention is to allow monthly inspections throughout the year in arid and semi-arid areas, TxDOT requests that TCEQ delete the phrase "seasonal arid period."

Response: The requirement regarding "seasonal arid periods" was meant to allow reduced inspections of controls for arid areas and semi-arid areas during periods when no rainfall occurs. To address this question, the second paragraph of Section III.F.7.(a) was revised as follows:

Where sites have been finally or temporarily stabilized or where runoff is unlikely due to winter conditions (e.g. site covered with snow, ice, or frozen ground exists), inspections must be conducted at least once every month. In arid or semi-arid areas, inspections must be conducted at least once every month and within 24 hours after the end of a storm event of 0.5 inches or greater.

Comment: Mesquite comments that the last sentence of Section III.F.7.(a) appears to allow the operator to change the inspection frequency at will rather than committing to set a schedule for the entire project and requests that the inspection frequency language be revised to read as it does in the current CGP.

Response: It was intended that the new CGP allow an operator to revise the inspection schedule during the period of construction. To clarify this intent while limiting the number of times that the operator may change the schedule, the last sentence of Section III.F.7.(a) was replaced with the following sentence. In addition, this same sentence was also added to the end of Section III.F.7.(b) related to linear construction:

The inspections may occur on either schedule provided that the SWP3 reflects the current schedule and that any changes to the schedule are conducted in accordance with the following provisions: the schedule may be changed a maximum of one time each month, the schedule change must be implemented at the beginning of a calendar month, and the reason for the schedule change must be documented in the SWP3 (e.g., end of "dry" season and beginning of "wet" season).

Comment: SCIECA asks whether Section III.F.7.(a) requires inspections to be conducted at the outfall of the conveyances or at the point where the runoff enters the conveyance (the inlet located inside the project). SCIECA notes that the point where the runoff enters the conveyance is sometimes miles downstream from the project, commingling with the storm water from other projects.

Response: The construction site operator must inspect points of discharge from the regulated site. Since one regulated site may be located within another regulated site, it would mean that the discharge point for the smaller site is where the storm water exits the smaller site and reaches the larger construction site.

Comment: SWS-Houston requests that representative inspections be allowed on all sites where inspections could compromise stabilization efforts, similar to the allowance for linear sites provided in Section III.F.7.(b).

Response: Section III.F.7.(b) allows operators of linear construction sites to inspect a length of 0.25 miles on each side of an access point, since linear construction activities may include many miles of disturbed area. Other construction sites will typically not include long distances between access points. Therefore, it is appropriate to require inspections along the entire boundary. Personnel would not necessarily need to physically walk the entire boundary if they are able to visually observe the controls for a certain distance.

Comment: SCIECA asks why Section III.F.8. requires the operator to provide appropriate controls for non-storm water discharges, since these discharges are considered eligible. SCIECA also asks what would be considered an appropriate control for irrigation water or non-hyperchlorinated water.

Response: Non-storm water discharges could include pollutants that are also present in storm water and may contain other pollutants of concern. Therefore, it is appropriate to address these discharges in the SWP3. Where a site may be automatically authorized under the

CGP without submitting an NOI, the authorization would not include non-storm water discharges. Section II.D.1. (re-numbered as Section II.E.1) was revised to add the language below as a new item (h) and to move the existing item (h) as a new paragraph after the list of items (a) through (h). TCEQ notes that non-storm water must be included in an SWP3 for it to be authorized under the CGP. Also, several of the discharges on the list may be allowable if the operator can demonstrate that they are not wastewaters: "(h) any non-storm water discharges are either authorized under a separate permit or authorization, or are not considered to be a wastewater." In addition, the following sentences were added to the end of the first paragraph of renumbered Section II.G.l., related to Waivers from Coverage:

. . .This waiver from coverage does not apply to non-storm water discharges. The operator must insure that any non-storm water discharges are either authorized under a separate permit or authorization, or are not considered to be a wastewater.

Part IV

Comment: TxDOT suggests replacing the phrase "the areas authorized" in the first sentence of Part IV with the phrase "concrete batch plant(s) authorized" to clarify that requirements of this section, particularly with regard to BMPs, SWP3s, inspections, and employee qualifications apply only to the batch plant and not other areas of the construction site also authorized under this permit.

Response: In response to the comment, the first sentence of Part IV was revised as requested.

Comment: Dallas comments that Part IV of the permit does not address mortar mixers, which have the same potential pollutant issues as batch plants in regards to pH and total suspended solids (TSS).

Response: TCEQ included specific conditions for concrete batch plants in this portion of the general permit. Storm water discharges from other construction support activities may be authorized under the general permit provided that they are conducted in accordance with Section II.A.2. of the CGP.

Comment: Dallas requests that TCEQ consider adding a sentence to the introductory paragraph of Part IV of the permit to indicate that all batch plants are required to be covered under this permit or an alternative permit.

Response: In response to the comment, the second sentence of the introductory paragraph of Part IV was revised as follows:

If discharges of storm water runoff from concrete batch plants are not covered under this general permit, then discharges must be authorized under an alternative general permit or individual permit.

Comment: Harris County states that the proposed permit, as well as the current CGP, has failed to clearly delineate when construction support operations should apply for separate TPDES coverage or when they can be covered under an activity's SWP3. Harris County suggests the following addendum to Part IV of the permit:

If a concrete batch plant is solely designated for a regulated construction site, discharges of storm water runoff may be authorized under the SWPPP for that construction site. A concrete batching plant which serves more than one regulated construction site cannot obtain TPDES authorization for its storm water discharges under this permit.

Response: Storm water runoff from a concrete batch plant may be authorized under the CGP, so long as it is included in the SWP3 for a construction site that it supports and provided that it is located within one mile of the regulated construction site, as required in Section II.A.2. of the permit. If an operator of a regulated construction activity does not wish to include storm water runoff from a supporting concrete batch plant in its SWP3, then the operator of the batch plant must obtain separate authorization under TXG110000, the general permit specific to concrete batch plants.

Comment: SECA states that it strongly approves and supports the requirements in Parts IV and V of the permit; and SOS states that it supports the additional restrictions on concrete batch plants in the permit.

Response: TCEQ acknowledges and appreciates the comments.

Comment: SCIECA comments that Part IV should clearly state that only storm water discharges can be authorized by the permit and that wastewater must be authorized by a separate permit or contained and hauled off site for disposal. SCIECA additionally suggests removing the concrete batch plant section of the general permit and adding a statement requiring all batch plants to obtain coverage for their wastewater and storm water discharges under the TXG110000 general permit. SCIECA states that the draft permit in its present form will mislead batch plant operators into permitting only their storm water discharges.

Response: TCEQ partially agrees with the comment and added the following two sentences to the end of the first paragraph of Part IV. However, TCEQ does not agree with requiring storm water runoff from all concrete batch plants to be authorized under TXG110000.

This permit does not authorize the discharge or land disposal of any wastewater from concrete batch plants at regulated construction sites. Authorization for these wastes must be obtained under an individual permit or an alternative general permit.

Comment: TAB states that Section IV.A.1. of the draft CGP is not specific enough in regards to the storm water location in relation to the concrete batch plant.

Response: In response to the comment, the introductory sentence in Section IV.A.1. was revised as follows to be more consistent with the language in the MSGP:

Operators of concrete batch plants authorized under this general permit must sample the storm water runoff from the concrete batch plants according to the requirements of this section of this general permit, and must conduct evaluations on the effectiveness of the SWP3 based on the following benchmark monitoring values:

Comment: TAB comments that an increase in sampling frequency outlined in Section IV.A.1. is unnecessary and also comments that the draft CGP does not clearly state that sampling is not required if there is not a discharge. TAB also states that the sampling requirements in Section IV.A.1. are not clear and could lead to confusion. Dallas asks whether there is an exemption to benchmark monitoring requirement of Section IV.A.2., if there is not a storm event of 0.1 inches of measured precipitation during a quarter. SCIECA states that concrete batch plants that are in operation for less than one quarter will be unable to sample according to the permit requirements since there cannot be a discharge following the first full quarter following submission of the NOI. TXDOT states that the requirement to require sampling based on the NOI submittal date may mean that sampling would be necessary after an operator has submitted an NOT and suggests revising Section IV.A.2. to read:

a minimum of one sample shall be collected, provided that a discharge occurs at least once following submission of the NOI and prior to submission of the NOT for the activity or final stabilization of the site.

Response: Section IV.A.2. requires benchmark sampling at a frequency of once per quarter, which is consistent with the requirements for storm water-only discharges listed in the TPDES general permit for concrete production facilities, TXG110000. In addition, TCEQ believes that it is appropriate to replace the annual sampling requirements related to the existing numeric effluent limits with a requirement to

develop BMPs and to conduct benchmark sampling on a more frequent basis than once per year. The MSGP requires benchmark sampling at a frequency of once every six months, and TXG110000 requires benchmark sampling at a frequency of once per quarter. Sections IV.A.1. - 3. were combined and Section IV.A.4. was renumbered as Section IV.A.2. to clarify the intent of these sections. These changes include clarification that sampling is not required if the first discharge following NOI submittal occurred after an NOT was submitted:

1. Operators of concrete batch plants authorized under this general permit must sample the storm water runoff from the concrete batch plants according to the requirements of this section of this general permit, and must conduct evaluations on the effectiveness of the SWP3 based on the following benchmark monitoring values:

Benchmark Parameter	Benchmark Value	Sampling Frequency	Sample Type
Oil and Grease	15 mg/L	1/quarter (*1)(*2)	Grab (*3)
Total Suspended Solids	100 mg/L	1/quarter (*1)(*2)	Grab (*3)
pH	6.0 - 9.0 Standard Units	1/quarter (*1)(*2)	Grab (*3)
Total Iron	1.3 mg/L	1/quarter(*1)(*2)	Grab (*3)

(*1) When discharge occurs. Sampling is required within the first 30 minutes of discharge. If it is not practicable to take the sample, or to complete the sampling, within the first 30 minutes, sampling must be completed within the first hour of discharge. If sampling is not completed within the first 30 minutes of discharge, the reason must be documented and attached to all required reports and records of the sampling activity.

(*2) Sampling must be conducted at least once during each of the following periods. The first sample must be collected during the first full quarter that a storm water discharge occurs from a concrete batch plant authorized under this general permit:

January through March
April through June
July through September
October through December

For projects lasting less than one full quarter, a minimum of one sample shall be collected, provided that a storm water discharge occurred at least once following submission of the NOI or following the date that automatic authorization was obtained under Part II.D.1., and prior to terminating coverage.

(*3) A grab sample shall be collected from the storm water discharge resulting from a storm event that is at least 0.1 inches of measured precipitation that occurs at least 72 hours from the previously measurable storm event. The sample shall be collected downstream of the concrete batch plant, and where the discharge exits any BMPs utilized to handle the runoff from the batch plant, prior to commingling with any other water authorized under this general permit."

Comment: TAB comments that the benchmarks for the parameters (Oil and Grease, Total Suspended Solids, pH, and Total Iron) listed in Section IV.A.1. are unreasonable for construction sites. TAB states that both the parameters chosen and the concentration levels proposed in the draft CGP were derived from general permits that are neither analogous to, nor compatible with, runoff from a construction site.

Response: The purpose of this section is to regulate storm water runoff from concrete batch plants, which are regulated in the current CGP. The benchmark parameters that were chosen are consistent with pollutants regulated for similar facilities in two other TPDES general permits: TXR050000 for discharges of storm water from industrial facilities, and TXG110000 for discharges from concrete production facilities. The existing CGP includes numeric effluent limits for TSS of 65 milligrams per liter (mg/l), Oil and Grease of 15 mg/L, and pH of at least 6.0 but not more than 9.0 standard unites. The benchmark levels that are proposed for Oil and Grease and for pH are equivalent to the previous effluent limits; therefore, the draft permit is no more restrictive than the current CGP. In addition, a benchmark level of 100 mg/L is greater than the existing effluent limits of 65 mg/L. Total iron is a parameter that is required in TXR050000 and in TXG110000 but was not required in the original CGP. However, TCEQ believes that it is appropriate in order to insure that all TPDES general permits for storm water discharges from concrete batch plants are consistent. The benchmark level was revised to 1.3 mg/L to be consistent with TXR050000 as shown in the previously revised language. Because the effluent limits have been removed, additional BMPs were added in order to address EPA's anti-backsliding regulations listed in 40 CFR §122.44(l). TCEQ believes that it is appropriate, where feasible, to replace numeric effluent limits for storm water discharges with a requirement to develop BMPs to address discharges. An operator may alternatively seek authorization for storm water runoff from a concrete batch plant under an individual TPDES permit.

Comment: Dallas recommends that remedial actions related to spills and leaks be documented and maintained.

Response: TCEQ believes that the requirements in Sections IV.B.1.(c) and IV.B.2.(b) to list the spills and to document procedures to address spills is adequate to address the concerns expressed by the commenter and no additional changes were made to the permit language.

Comment: TxDOT suggests revising the terms "qualified facility personnel" and "qualified personnel" in Sections IV.B.2.(c) and IV.B.3., respectively, to provide a single term for consistency. TxDOT also recommends that the permit define the minimum training necessary to meet the "qualified" person requirement and suggests that, as a minimum standard, a person should complete employee training as described in Section IV.B.2.(d) of the permit. Dallas requests additional guidance on inspector qualifications listed in Section IV.B.2.(c) of the permit.

Response: In response to the comment, the first sentence of Section IV.B.2.(c) was revised as follows to be more consistent with Section III.F.7.(a) of the general permit.

(c) Inspections - Qualified facility personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) must be identified to inspect designated equipment and areas of the facility specified in the SWP3.

In addition, the first sentence of Section IV.B.3. was revised as follows:

3. Comprehensive Compliance Evaluation - At least once per year, one or more qualified personnel (i.e., a person or persons with knowledge of this general permit, the concrete batch plant, and the SWP3 related to the concrete batch plant(s) for the site) shall conduct a compliance evaluation of the plant.

Comment: SCIECA requests that the employee training requirements in Section IV.B.2.(d) be made a requirement of the general permit for the entire site and not just for concrete batch plants.

Response: TCEQ declines to add a requirement for training of construction site personnel because the requirement is not included in the existing CGP or in EPA's CGP. However, for clarification purposes, the last sentence of Section IV.B.2.(d) was revised as follows to state that a minimum of one training session must be documented prior to the initiation of construction.

The frequency of training must be documented in the SWP3, and at a minimum, must consist of one training prior to the initiation of operation of the concrete batch plant.

Comment: Fort Hood states that the references in Section IV.B.3(b) and (d) to other sections in Part IV are incorrect and should be changed.

Response: In response to the comment, Section IV.B.3.(d) was corrected to reference the inspections in Section IV.B.2.(c); and Section IV.B.3.(b) was revised to change the references to the Description of Potential Pollutant Sources to Section IV.B.1. and the Measures and Controls to Section IV.B.2.

Part V

Comment: SCIECA states that the washing out of concrete trucks by land application as allowed in Part V of the draft permit is in conflict with Section IV.C. because TXG110000 defines concrete truck washout water as wastewater, which is not authorized under the draft permit. If concrete truck washout is defined as wastewater, then Part V of the CGP should be revised or removed.

Response: As discussed in an earlier response, concrete truck washout was removed from the list of authorized discharges in Section II.A.4.; and it was replaced with a new Section II.B. stating that concrete truck washout may be conducted in certain circumstances. These changes clarify that the CGP would not allow a direct discharge of concrete truck washout to surface waters.

Comment: Centex Homes supports the clarifications in Part II and in Section V.A. that washout water from concrete trucks may be authorized provided that permit requirements are met and the wastewater is properly contained on site. SCIECA contends that concrete truck washout water and concrete batch plant wash water are virtually the same and requests clarification on why these waters are treated differently under the draft permit.

Response: TCEQ added a provision allowing land disposal of concrete truck washout in order to address those trucks that transport concrete from an off site location. TCEQ did not intend for the CGP to provide for authorization of concrete truck washout from on-site concrete batch plants and believes that any discharge or disposal of wastewater associated with an on-site concrete batch plant should be authorized under TXG110000, related to concrete production facilities, or under an individual permit. Therefore, the first paragraph of Part V was revised as follows to make it clear that the permit does not authorize wastewater discharges from on-site concrete production facilities:

This general permit authorizes the wash out of concrete trucks at construction sites regulated under Sections II.E.2., 3., and II.E.4. of this general permit, provided the following requirements are met. Authorization is limited to the land disposal of wash out water from concrete trucks that are associated with off-site production facilities. Wash out water associated with on-site concrete production facilities must be authorized under a separate TCEQ general permit or individual permit.

Comment: Fort Hood states that in Section V.2., the word "measure" in the last sentence should be plural ("measures").

Response: The noted correction was made in the permit.

Comment: SWS-Houston, Harris County and TxDOT request that Section V.3. be revised to allow concrete wash out to occur during rain events as long as wash out water is confined to structural controls designed to prevent discharge.

Response: In response to the comments, Section V.3. was revised as follows:

Wash out of concrete trucks during rainfall events shall be minimized. The direct discharge of concrete truck wash out water is prohibited at all times, and the operator shall insure that its BMPs are sufficient to prevent the discharge of concrete truck washout as the result of rain.

Comment: Fort Hood requests clarification on whether on not concrete truck wash out water is allowed to infiltrate into the ground under the CGP and, if so, how an operator can ensure that the wash water does not cause or contribute to groundwater contamination in accordance with Section V.4. Harris County contends that the proposed requirements are not consistent because Section V.2. seems to encourage infiltration, while Section V.4. prohibits groundwater contamination. Harris County recommends removing concrete truck wash out requirement in Section V.4. and instead adopting guidance similar to EPA guidance on the subject, which dissuades infiltration and provides examples of complete capture systems, as well as minimum wash out distances from storm water inlets, ditches, and other water bodies.

Response: Section V.2. states that concrete truck wash out water may infiltrate into the ground. However, an operator must evaluate the potential pollutant sources present in the discharge, the characteristics of the soil in the area proposed for retaining the washout, groundwater quality, and other information in making the determination that groundwater will not be impacted. TCEQ declines to change the permit language but recognizes that some circumstances may necessitate the use of alternative BMPs to address concrete truck washout where groundwater contamination could occur. An example where this may be necessary is where the site soils are very permeable and the groundwater table is very shallow thereby minimizing the level of treatment that the infiltration is meant to provide.

Comment: TxDOT believes that having to update the site map required in Section V.5. every time portable concrete washout containers are moved is an unnecessary burden, and may also be a deterrent to moving them even when it is appropriate to do so. TxDOT suggests replacing the language in Section V.5. with the following language: "If a SWP3 is required to be implemented, the SWP3 shall include a description of appropriate controls for concrete wash out."

Response: TCEQ disagrees that a change is needed. Concrete truck washout may contain significant levels of pollutants, and it is reasonable to include their locations on the site map. The site map when originally prepared could show multiple potential locations for the handling of concrete truck washout, thereby minimizing the number of changes that would be required in the SWP3.

Part VI

Comment: SCIECA comments that the requirement in the second sentence in the first paragraph of Part VI, related to the retention of records for sites not required to submit an NOT, is in conflict with the requirement for the NOT. SCIECA comments that the three-year time period in this provision begins when another permitted operator assumes control. However, the NOT requirement states that, if the current operator notifies the new operator and the new operator does not file an NOI, then the current operator has met the NOT requirement even though no permitted operator has assumed control of all of the areas of the site that have not been finally stabilized. If no other permitted operator has assumed control of the areas of the site that have not been finally stabilized, then the three-year record retention period would not begin.

Response: In response to the comment, the second sentence of the introductory paragraph to Part VI was revised as follows:

For activities in which an NOT is not required, records shall be retained for a minimum period of three (3) years from the date that the operator terminates coverage under Section II.F.3. of this permit.

Part VII

Comment: Centex Homes comments that Section VII.6., which requires reports and other information requested by the TCEQ to be signed in accordance with 30 TAC §305.128, is unclear regarding whether the SWP3 is included. Centex Homes asks TCEQ to clarify what, if any, signature/certification requirements apply to the SWP3.

Response: The SWP3 is a report required by the CGP and would be subject to the signatory requirement. The original SWP3 is not required to be signed, as the NOI signature certification provides sufficient certification that the SWP3 has been developed and implemented. However, shared SWP3s must be signed in accordance with Section III.A.1. of the CGP.

Part VIII - Fees

Comment: Compliance Resources comments that the $250.00 fee is an incentive for larger projects but asks what the incentive is for the operator of a construction activity of less than 10 acres that will not be covered under the CGP for more than one year.

Response: The new CGP does not charge anyone the annual water quality fee, so the incentive for submitting an electronic NOI is a $100 savings over submitting a paper NOI. The cost is the same regardless of the length of the project. If the comment relates to charging based on the number of acres disturbed, TCEQ declines to establish a graduated fee structure based upon project size but could reconsider this option in future renewals of the permit.

Comment: SWS asks if construction projects active on September 1, 2007 will be billed the $100 annual Water Quality Fee.

Response: All construction projects with active authorizations under the CGP as of September 1, 2007 were billed the $100 annual water quality fee.

Comment: SWS asks if operators of existing construction projects will be required to pay the full NOI fee upon renewal.

Response: Operators who were covered under the current version of the CGP who are required to submit an NOI for coverage under the new version of the CGP are required to pay the full fee when applying for authorization.

Comment: SOS states that permit fees should be able to support the cost of rigorous inspection, enforcement and thorough clean-up/mitigation of unauthorized discharges. Also, SOS states that TCEQ should examine the costs associated with these activities when making changes to the fee structure. SOS also requests that TCEQ present data detailing whether current fees are meeting the needs of inspection and enforcement for construction sites.

Response: TCEQ supports the storm water program, including permitting, inspection, enforcement, administrative, and other costs, with permit fees, federal, and state monies. The proposed combined fee structure is anticipated to generate approximately the same amount of revenue that would have been generated with the current fee structure.

Comment: SOS suggests establishing a fee structure based upon the total acreage disturbed. SOS states that this prevents small construction projects from subsidizing larger construction projects and addresses the issue that larger construction sites require greater inspection and enforcement resources and have a higher potential to cause environmental impacts.

Response: Size of the construction project represents only one of many factors that impact inspection/enforcement resources and potential to cause environmental impacts. Factors such as operator expertise/diligence and site specific conditions (soils, proximity to receiving waters, topography) may also impact resources and increase the potential to cause environmental impact. As a result, the TCEQ declines to establish a fee structure graduated based upon project size at this time.

Comment: Harris County states that the fee incentive for applying electronically penalizes governmental agencies that are unable to submit electronic NOIs.

Response: Electronically submitted NOIs require fewer human and fiscal resources for processing. These reduced processing costs are reflected in the fee for electronic NOI submittal. TCEQ's intention is not to penalize those who choose to submit paper NOIs but reflect the difference in processing costs within the fees.

Comment: Harris County supports the proposed one-time, up-front combined fee.

Response: TCEQ acknowledges HCPIC support of the combined fee.

Comment: Dallas and Mesquite state that the annual water quality fee served as an incentive for construction sites to file NOTs and helped the TCEQ and MS4 maintain clean records. Mesquite is concerned that, without the incentive of the annual Water Quality Fee, operators will not submit NOTs, which will lead to unnecessary inspections.

Response: TCEQ considered these factors in examining the fee structure for the CGP. Ultimately, TCEQ decided that the costs for processing annual billing, both to the TCEQ and its customers outweighed the potential costs associated with an operator's failure to submit an NOT.

Attachments

Comment: Harris County comments that the site notices are included in the proposed permit, but that the NOI and NOT forms are not. Harris County agrees with the TCEQ to have NOIs and NOTs separate from the permit to allow for easy revision and recommends that the site notices also be separate from the permit, so that these forms can be easily updated without having to amend the permit.

Response: TCEQ declines to remove the site notices from the CGP and believes that having the documents as part of the permit will help operators obtain the required documents.

Comment: TxDOT requests that TCEQ consider requiring the certification and signature on the site notices only when an NOI is not required, since the NOI already contains a certification and signature. TxDOT states that this will reduce the initial administrative burden and allow more timely replacement of notices that are lost, destroyed, stolen, or vandalized at a site. CRI asks whether an operator may use signage that contains the same information as the TCEQ Construction Site Notice, rather than using the site notice provided in the permit. SWS-Houston comments that the Section III.D.2. of the draft permit requires the use of Attachment 3 (Large Construction Site Notice), but that Part IV of the Fact Sheet states that the operator is not required to use the notice provided in the permit. SWS-Houston requests that TCEQ reconsider the requirement for the operator to complete the certification and signature, because it duplicates information already on the NOI and because conditions for larger construction sites may frequently change (i.e., location of the SWP3, estimated project dates, and contact information). Capitol Environmental requests removal of the requirement for operators at large construction sites to post a site notice. Capitol Environmental states that the only information in the site notice that is not required on the NOI is the location of the SWP3 and requests that the NOI include a section for the operator to add the location of the SWP3 either prior to or following NOI submittal.

Response: In response to the comments, TCEQ revised the attachments to add a new site notice for secondary operators. This site notice for secondary operators will include a signature certification, since an NOI is not required to be submitted. A separate site notice is being required for primary operators and for large construction activities that will not include a signature certification since an NOI will be signed and submitted to TCEQ. TCEQ declines to remove the requirement for operators of large construction site to post a site notice. It would not be appropriate for the NOI to include information that can be changed following submittal, and including information on the SWP3 location may result in the requirement for the operator to submit an NOC each time the SWP3 location changes.

Comment: Mesquite asks whether new construction site notices will be required for small, ongoing construction sites.

Response: New NOIs and site notices will be required for all regulated construction activities to insure that operators are aware of the new permit conditions and are prepared to comply with the new CGP.

General Comments:

Comment: SWS states that many operators create partnerships, holding companies, or other site-specific entities for the sole purpose of developing a specific construction site. SWS comments that one person with signatory authority may be able to sign for as many different entities as there are active construction sites and that one person submits a specific participation agreement (SPA) for every new construction site developed. SWS believes that most land developers in the Houston area will not take advantage of electronic filing through the State of Texas Environmental Electronic Reporting System (STEERS) because they are required to submit customer SPAs for every entity created.

Response: An SPA is required for an individual person, as opposed to an entity or company, to obtain a TCEQ STEERS account. CGP NOIs must be signed by the person meeting the signatory requirements specified in TCEQ rules at 30 TAC §305.44(a). The SPA that is submitted for the person who signs and submits the NOI must be the person meeting the signatory requirements. This individual person may update their SPA as necessary to reflect their position as the signatory authority for additional entities. This is best illustrated by the following example:

Example:

SPA 123 (the individual with Consulting Company 123) logs onto STEERS and completes all portions of the NOI for Entity ABC, except for the signature and submittal.

SPA ABC (the signatory authority for Entity ABC) logs onto STEERS and signs and submits the NOI for Entity ABC.

SPA 456 (an individual with Consulting Company 456) logs onto STEERS and completes all portions of the NOI for Entity EFG except for the signature.

SPA ABC (the signatory authority for Entity ABC, who is now also the signatory authority for Entity EFG) logs onto STEERS and updates the SPA to reflect that they are associated with Entity EFG. SPA ABC then signs and submits the NOI for Entity EFG.

As Entities HIJ, KLM, etc. are created; SPA ABC can go in and update STEERS to reflect the association with entities HIJ, KLM, etc., in order

to sign and submit the NOIs for those additional entities for which they are the signatory authority.

Please note, this example also illustrates the capability within STEERS for one individual to log into STEERS, complete portions of the NOI, and then allowing a different individual to log into STEERS (using their own SPA) and complete other portions of the NOI.

Comment: Fort Hood asks if TCEQ can identify a way for federal agencies to pay by credit card so that they can use STEERS to submit NOIs and NOTs. If not, Fort Hood asks if TCEQ can provide an exception for federal agencies and allow the submittal of a paper check by mail following NOI submittal through STEERS.

Response: The TCEQ ePermitting system was developed to provide an electronic process without any manual intervention so that processing costs are reduced. The ePermitting system allows for methods of payment by Visa, Master Card, American Express, and check. Many governmental entities have adapted by implementing the use of a procurement credit card to allow staff to make electronic payments.

Comment: TAB requests that TCEQ add a provision regarding a Qualifying Local Program (QLP) and comments that it will streamline the state storm water programs and simplify the requirements for Texas home builders. TAB believes that there is a duplication of permitting by the state and the regulated construction programs of regulated MS4s, and that the duplication has proved to be burdensome and confusing rather than more protective. TAB notes that the EPA has incorporated a provision in its regulations related to QLPs that impose equivalent controls on construction activities by allowing the QLP to be the sole permitting authority thereby relieving the burden on the construction site operators. TAB also comments that EPA issued a memorandum encouraging permitting authorities to adopt QLP provisions when general permits are reauthorized.

Response: 30 TAC §305.531 adopted by reference 40 CFR §122.44. 40 CFR §122.44(s) establishes for incorporation of qualifying State, Tribal or local erosion and sediment control program requirements by reference into the NPDES permit authorizing storm water discharges from construction sites. For regulated construction activities in Texas, this would mean that the TPDES CGP would need to incorporate by reference a qualifying local program (e.g., an MS4 operator's construction permitting program) that includes certain program elements; and the CGP would need to require sites under the jurisdiction of a QLP to follow the requirements of that QLP rather than following the CGP. If a program does not include all the elements in this rule, then the CGP would need to specify the missing elements in order to incorporate the program by reference.

At this time, TCEQ has not reviewed the construction programs for any small MS4s, because small MS4s that are regulated under the CGP provides operators with an implementation deadline of August 13, 2012 for all program elements. During the next permit term, TCEQ may have sufficient information to review these programs and determine whether or not they could be considered under this provision. For existing Phase I MS4s, TCEQ has not conducted a review specific to this rule and is not prepared to incorporate by reference any construction regulatory programs that are currently in place. However, in the future, it is possible that programs could be considered under this provision. In response to the comment, TCEQ revised Part IV of the Fact Sheet to add the following Section IV.E.:

E. Qualifying Local Programs

This general permit does not include by reference any qualifying local programs (see federal rules at 40 CFR §122.44(s)); however, the permit may be amended in the future to include appropriate programs that are currently being implemented or that will be implemented in the future by regulated municipal separate storm sewer systems (MS4s).

Comment: SOS comments that the CGP should require phasing or clearing limits and states that the draft CGP does not appear to require any buffer from surface waters or recharge features. SOS states that the practice of clearing wide areas of land in a relatively short amount of time increases the chance that large amounts of sediment will be washed into creeks and that BMPs will fail during rain events. SOS provides the following language, excerpted from the Ohio CGP as an example that could be included in the general permit:

Non-Structural Preservation Methods. The SWP3 must make use of practices which preserve the existing natural condition as much as feasible. Such practices may include: preserving riparian areas adjacent to surface waters of the state, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time and designation of tree preservation areas or other protective clearing or grubbing practices.

In addition, SOS recommends requiring stream buffers for all surface waters, including extended buffers for sensitive creeks and watersheds and recommends setbacks of 100 to 400 feet, depending on the drainage area.

Response: TCEQ believes that the requirements in the CGP regarding the establishment of appropriate erosion and sediment controls adequately insure that water quality is protected at this time. The CGP requires operators of construction activities to properly maintain BMPs and meet the other requirements of the general permit in order to be considered in compliance with the permit. The requirements of the CGP that may be related to this issue include, but are not necessarily limited to, minimizing to the extent practicable the discharge of pollutants in storm water associated with construction activity at the construction site, establishing an SWP3, using appropriate and effective BMPs, proper maintenance of BMPs, and removal of off-site accumulations of sediment at a frequency that minimizes off-site impacts.

Comment: SOS states that the CGP relies on informational, observational and scheduling aspects of BMP implementation and that there does not appear to be any oversight to ensure that BMPs are correctly installed.

Response: A construction site operator regulated under the CGP would be subject to possible enforcement action by TCEQ or by EPA based on noncompliance with the permit. Noncompliance with the permit could include, but is not limited to, a lack of BMPs, installing inadequate BMPs, or insufficient maintenance of BMPs. In addition, many construction sites discharging into MS4s are subject to local requirements that may be enforced by the municipality who operates the MS4.

Comment: SOS comments that the CGP should be revised to include additional enforcement provisions in order to prevent construction site pollution and to prevent the shifting of the costs that downstream landowners and taxpayers have when public land is affected. SOS suggests that the CGP require applicants to post a bond during construction and states that this would build the correct incentive into the permit by putting the applicant's money on the line and would allow for recovery of remediation costs if local governments have to clean up any pollution. SOS states that the concern regarding the cost of this requirement should be considered in relation to the cost that would otherwise be transferred to local governments and the environment if and when BMPs fail.

Response: TCEQ declines to require a bond for construction activities authorized under this general permit. This requirement is not included in the existing TPDES CGP and is not required in EPA's CGP. If a

discharger fails to meet the requirements of the general permit, then enforcement may be initiated, which could result in penalties up to $10,000 per day per violation.

Comment: SOS states that it is incorporating by reference (without including the actual comments) the comments that it made in 2002 on the current version of the CGP regarding the negative impacts to the endangered Barton Springs salamander because very few additional endangered species protections have been added since that permit was issued. SOS states that absent greater protection of water quality during construction phases, the proposed re-issued CGP will continue to violate both the Clean Water Act and the Endangered Species Act.

Response: TCEQ addressed the comments made by SOS in 2002 regarding the negative impacts on the Barton Springs salamander in the Response to Comments to the original CGP. Absent actual comments or copies of the comments SOS is referring to, TCEQ refers SOS to our 2003 responses regarding this issue; (See 28 TexReg 2770 (2003)). TCEQ believes that the permit conditions in the proposed renewal continue to be consistent with EPA and TCEQ surface water quality standards. Storm water discharges from construction activities are intermittent and highly flow-variable and do not occur during instream low flow conditions. BMPs and technology-based controls are required to regulate the quality of storm water discharges, an approach that is consistent with EPA's Interim Permitting Approach and with the Texas Surface Water Quality Standards found at 30 TAC §307.8(e). Additional discussion on the water quality aspects of this permit is included in Part XI of the Fact Sheet and Executive Director's Preliminary Decision.

Comment: SOS states that sediment and several associated toxic and oxygen demanding materials (either within or attached to sediment) are among the pollutants impairing water quality and states that the draft permit does not address how CWA, §303(d) listed waters will be protected from additional pollutant loadings.

Response: Section II.B.4. of the CGP, related to Discharge to Water Quality-Impaired Receiving Waters, continues language from the existing TPDES CGP regarding discharges of the constituents of concern to impaired waters and to waters where there is a TMDL. The requirement states that these discharges are not eligible for coverage under the CGP, unless they are consistent with the requirements of an approved TMDL or unless they are otherwise allowable under 30 TAC Chapter 305.

Fact Sheet

Comment: SCIECA comments that Section IV.A. of the Fact Sheet states that an operator may elect to create their own site notice if it contains the required information but notes that there is no reference in the draft permit for the option of a self-created site notice. SCIECA requests that the TCEQ add that option to the permit or remove this information from the Fact Sheet.

Response: In response to the comment, the Fact Sheet language was corrected to be consistent with the CGP requirements to post the site notice that is included as an attachment to the general permit.

Comment: Oncor comments that the language in Sections I.F., V.V., IX.C., and IX.D. of the Fact Sheet (as well as Sections II.D.3.(b) and II.D.5.(b) of the draft permit), as noted in earlier comments regarding the change in provisional authorization from two to ten days does not make clear the goals TCEQ hopes to achieve by increasing the provisional authorization waiting period. Oncor states that it believes receiving the paper NOI before the provisional coverage is of no real value when it is unlikely that the TCEQ can review the NOI for completeness and notify operators of deficiencies or denial of coverage, within the proposed time frame or before construction starts.

Response: In an earlier response related to Section II.D.3. of the CGP, TCEQ changed the provisional authorization date when an NOI is submitted by mail from the proposed ten days to seven calendar days. TCEQ believes that an increase from the current version of the CGP is warranted to allow ample time for the NOI to be received by TCEQ and would also insure that the NOI is available in the Storm Water NOI Processing Center. This will aid in providing information to concerned persons requested information on particular NOIs and will also help to encourage electronic submittal. TCEQ disagrees that this new provision will delay construction activities to a great extent. Additionally, the CGP offers electronic submission of NOIs that offers provisional authorization upon submission. In response to the comment and for consistency with other sections of the CGP, Section V.U. of the Fact Sheet was revised as follows to provide for provisional coverage seven days after a paper NOI is postmarked for delivery:

U. The current CGP provides provisional authorization 48 hours after postmark when a paper NOI is submitted, and the permit was revised to provide for provisional authorization seven (7) days following the postmark on a paper NOI. The purpose of this change is to allow sufficient time to insure that all paper NOIs are received by the TCEQ and available to personnel processing the NOI forms, to aid in providing information to concerned persons requested information on particular NOIs and to help encourage electronic submittal of storm water applications.

Comment: Centex Homes comments that Sections I.B., IV.A., V.B., and V.D. of the Fact Sheet state that by revising the definition of "operator" in the permit and adding additional language to Section II.D.3.(f), TCEQ hopes to clarify the category of operators required to submit an NOI. Centex Homes believes that the proposed revisions and added language are too vague to provide adequate guidance to determine the operator(s) who are required to submit an NOI and recommends that TCEQ provide clear, specific, objective, and measurable criteria to help the regulated community to be able to make that determination more effectively.

Response: In responding to several comments related to the definition of "operator," the TCEQ made several revisions to the permit to better explain who is regulated under the CGP; and these changes have been addressed in the relevant portions of the Fact Sheet as well.

Comment: Centex Homes requests that the Fact Sheet provide clear guidance as to how a homebuilder should obtain coverage when having purchased one or more lots from a developer who already has coverage for the area where those purchased lots are located.

Response: In response to the comment, the following language was added to the end of Section IX.A. of the Fact Sheet:

The general permit defines large and small construction activities and includes requirements for both. The general permit specifies that a smaller project that is part of a larger common plan of development or sale that will disturb one or more acres is regulated. A common plan of development or sale is defined in the permit as a construction activity that is completed in separate stages, separate phases, or in combination with other construction activities, that is identified by the documentation for the construction project that identifies the scope of the project. A common plan of development does not necessarily include all construction projects within the jurisdiction of a public entity (e.g., a city or university). Construction of roads or buildings in different parts of the jurisdiction would be considered separate "common plans," with only the interconnected parts of a project being considered part of a "common plan" (e.g., a building and its associated parking lot and driveways, airport runway and associated taxiways, a building complex, etc.). Where discrete construction projects occur within a larger common plan of development or sale but are located 1/4 mile or more

apart, and the area between the projects is not being disturbed, each individual project can be treated as a separate plan of development or sale, provided that any interconnecting road, pipeline or utility project that is part of the same "common plan" is not included in the area to be disturbed.

An example of a smaller construction project that is regulated under the general permit would include the building of single houses on lots of a quarter-acre each within a larger residential development of five of more acres. Any operator constructing single homes within that development would be regulated as an operator of a large construction activity and required to develop an SWP3 and submit an NOI. If the development was generally completed, then a builder may be able to look at the size of the remaining area to be disturbed in determining the size of the larger common plan of development or sale by answering a two part question. First, was the original plan, including modifications, ever substantially completed with less than one acre of the original "common plan of development or sale" remaining (e.g., <1 acre of the "common plan" was not built out at the time)? If so, was there was a clearly identifiable period of time with no on-going construction, including meeting the criteria for final stabilization? If the answer to both of the questions is "yes," then it would be appropriate to consider the new project of less than one acre as a new common plan of development. Another example of a "new" common plan of development or sale would be the addition of a swimming pool, fence, or similar addition to a lot by a homeowner after having purchased the lot. Even if the rest of the homes have not been built, the additional construction by the homeowner would be its own common plan unless it was specifically delineated in the plans for the overall development.

Comment: TAB comments that the Fact Sheet states that the definition of operator has changed but does not appear to be any different from the old definition and requests that the TCEQ change and clarify the definition to be commensurate with TCEQ's intentions.

Response: In response to this and to several comments regarding the definition of "operator" in Section I.B. of the CGP, the definition was revised to be consistent with the existing definition in EPA's CGP and to specify that persons meeting the definition are considered "primary operators" and "secondary operators." In addition, the relevant portions of the Fact Sheet were revised to explain the changes that were made. For additional information on the definition, refer to the earlier responses that addressed with the definition of "operator."

Comment: Tarrant County comments that the Fact Sheet should provide details regarding the requirement to post the Large Construction Site Notice and states that this appears to be a new requirement in the draft permit that is not adequately clarified in the Fact Sheet.

Response: TCEQ agrees and revised the following portions of the Fact Sheet to clarify that the operator and the secondary operator of a large construction activity must post the appropriate site notice for large construction activities that is included in the CGP. The last sentence of the second full paragraph was removed, and the new final sentence (previously the next to last sentence) was revised as follows: "Operators and secondary operators must post a site notice that is included as an attachment to the general permit." Section V.S. of the Fact Sheet, related to changes from the existing permit, was revised to include language regarding site notices for large construction activities:

Added two site notices as attachments to the draft permit, which will be required for large construction sites: one is not required to be signed and must be posted by operators of large construction sites; and the other must be signed and posted by secondary operators of large construction sites, where the secondary operator is different from the operator. Operators and secondary operators of small construction sites must post either Attachment 1 or 2, whichever is appropriate.

TRD-200800987
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 19, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 31, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 31, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Barton Good Oil Company, Inc. dba Flying L Fastmart; DOCKET NUMBER: 2004-1583-PST-E; TCEQ ID NUMBER: RN101552297; LOCATION: 1611A Highway 50, Commerce, Hunt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(d)(9)(A)(iv), by failing to report any underground storage tank (UST) system analysis report result other than pass to the TCEQ as a suspected release within 24 hours of receipt of the report; PENALTY: $4,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Haskell dba City of Haskell Airport; DOCKET NUMBER: 2004-1716-WQ-E; TCEQ ID NUMBER: RN103887006; LOCATION: 333 County Road 210, Haskell, Haskell County, Texas; TYPE OF FACILITY: municipal airport; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit Number TXR050585, Part III, Section A(3)(a) - (d), by failing to identify, survey, and certify all non-storm water discharges that are eligible for permit coverage; 30 TAC §281.25(a)(4) and TPDES Multi-Sector General Permit Number TXR050585, Part III, Section A(7), by failing to conduct the annual

comprehensive site compliance evaluations for calendar years 2002 - 2003; 30 TAC §281.25(a)(4) and TPDES Multi-Sector General Permit Number TXR050585, Part III, Section D(1), by failing to monitor, during a storm event, outfalls for numeric effluent limits for hazardous metals for calendar years 2002 - 2003; and 30 TAC §334.22(a), by failing to pay past due fees and UST fees for TCEQ Financial Account Numbers 0004710A and 0004710U; PENALTY: $6,300; Supplemental Environmental Project offset amount of $6,300 applied to Texas Association of Resource Conservation & Development Areas, Inc. Wastewater Treatment Assistance; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(3) COMPANY: Cowboy Foundations and Construction, Inc.; DOCKET NUMBER: 2005-0050-WQ-E; TCEQ ID NUMBER: RN104332945; LOCATION: 19485 Marbach Lane, Bracken, Comal County, Texas; TYPE OF FACILITY: sand and gravel quarry; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to have authorization to discharge stormwater from an industrial activity requiring a permit; PENALTY: $4,200; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Degussa Engineered Carbons, L.P.; DOCKET NUMBER: 2004-0668-MLM-E; TCEQ ID NUMBER: RN100209899; LOCATION: 9300 Needlepoint Road, Baytown, Harris County, Texas; TYPE OF FACILITY: plant; RULES VIOLATED: 30 TAC §305.125(1), Texas Water Code (TWC), §26.121(a), and TPDES Permit Number 00737-000, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with final effluent limitations and monitoring requirements and by failing to comply with effluent limitations under TPDES Permit Number 00737-000; and 30 TAC §101.352(b) and §101.359 and Texas Health and Safety Code, §382.085(b), by failing to submit timely to the TCEQ an Annual Compliance Report (Form ECT-1) and by failing to properly report a quantity of allowances in the plant's compliance account that is equal to or greater than the total emissions of nitrogen oxides during the 2002 control period; PENALTY: $51,510; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Mohammad Elhommoud dba Sam's Grocery Mart; DOCKET NUMBER: 2002-0779-PST-E; TCEQ ID NUMBER: RN101870673; LOCATION: 906 East Harris, Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475, by failing to equip the regular unleaded product line with an automatic line leak detector; TWC, §26.121, by failing to prevent a release of a petroleum product at the facility; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the facility; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475, by failing to provide a release detection method for the UST system to monitor for release of petroleum product at least once per month not to exceed 35 days; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to ensure that the UST Registration and Self Certification form was fully and accurately completed, and that it was submitted to the TCEQ in a timely manner; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance; PENALTY: $14,500; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200800990
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 19, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 31, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 31, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Asad Enterprises, Inc. dba Davis Food Mart; DOCKET NUMBER: 2004-1991-PST-E; TCEQ ID NUMBER: RN102437779; LOCATION: Highway 69 North and Farm-to-Market Road 1943 West, Warren, Tyler County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: $3,150; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496 ; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Eileen Rouke dba Fastop 66; DOCKET NUMBER: 2001-1082-PST-E; TCEQ ID NUMBER: RN102238706; LOCA-

TION: 1701 West Broadway, Van Horn, Culberson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.8(c)(4)(B) and Texas Water Code (TWC), §26.346(a), by failing to complete and submit self-certification documentation; 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the UST system is accepted; and 30 TAC §334.21, by failing to pay UST fees for Account Number 0024752U for Fiscal Year 2000; PENALTY: $5,000; STAFF ATTORNEY: Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Matt Dietz dba Matt Dietz Company; DOCKET NUMBER: 2002-0714-MLM-E; TCEQ ID NUMBER: RN101926970; LOCATION: 25 miles south of Laredo on Highway 83, Zapata County, Texas; TYPE OF FACILITY: ranch; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by conducting unauthorized burning of plastic; and 30 TAC §330.5(a), by failing to properly dispose of solid waste; PENALTY: $9,375; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(4) COMPANY: Spur Services, Inc. dba Spur Texaco; DOCKET NUMBER: 2004-1825-PST-E; TCEQ ID NUMBER: RN101654119; LOCATION: 4700 Doniphan Drive, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for TCEQ Account Number 0059962U for Fiscal Years 2004 - 2005 and associated late fees; and Agreed Order Docket Number 2001-1186-PST-E, by failing to pay outstanding administrative penalties associated with Agreed Order Docket Number 2001-1186-PST-E, for TCEQ Account Number 23700281; PENALTY: $3,810; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(5) COMPANY: Viking Industries, Inc.; DOCKET NUMBER: 2004-1543-MLM-E; TCEQ ID NUMBER: RN104247572; LOCATION: 1840 Upper Denton Road, Weatherford, Parker County, Texas; TYPE OF FACILITY: recycling center; RULES VIOLATED: 30 TAC §328.5(e), by failing to have a fire prevention and suppression plan as required when managing combustible materials; 30 TAC §328.5(c)(2)(B), by failing to maintain all records necessary to document staff training in the inspection of incoming loads to ensure that the loads contain no more than 10% incidental non-recyclable waste; 30 TAC §332.8(b)(2), by failing to treat all permanent in-plant roads for maximum control of dust emissions and post 10 miles per hour or below speed limit signs; 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning; and 30 TAC §330.5, by failing to obtain authorization for the collection, storage, processing, or disposal of municipal solid waste; PENALTY: $7,130; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200800991
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 19, 2008

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 31, 2008**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 31, 2008**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Friends International, Inc. dba Super Deli & Grocery; DOCKET NUMBER: 2003-0346-PST-E; TCEQ ID NUMBER: RN101765709; LOCATION: 1824 Sens Road, La Porte, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(4) and Texas Health and Safety Code, §382.085(b), by failing to maintain proof of attendance and completion of facility representative training

as specified in 30 TAC §115.248 (regarding state approved Stage II training course) and documentation of Stage II training for each employee; 30 TAC §334.50(b)(1)(A) and Texas Water Code (TWC), §26.3475(c)(1), by failing to conduct monthly monitoring of the underground storage tank (UST) systems; 30 TAC §334.50(b)(2)(A)(ii) and TWC, §26.3475(a), by failing to monitor each pressurized line for releases; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all UST systems at a retail station; PENALTY: $16,000; STAFF ATTORNEY: Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200800992
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 19, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 19

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 19, Electronic Reporting.

The proposed rulemaking would implement House Bill 1254, 80th Legislature, 2007, Regular Session, by stating that the commission may adjust fees as necessary to encourage electronic reporting and the use of the commission's electronic document receiving system. The proposed section would serve as an advance notice that the commission may consider fee changes in the future for this purpose.

The commission will hold a public hearing on this proposal in Austin on March 27, 2008, at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact John Gaete, Office of Legal Services, at (512) 239-6091.

Comments may be submitted to John Gaete, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-050-019-PR. The comment period closes March 31, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ellette Vinyard, Permits and Remediation Section, (512) 239-6845.

TRD-200800958
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 15, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, and to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would repeal the state regulations that require all new heavy-duty diesel engines (HDDE) produced for sale or use in Texas for the 2005 and newer model years to be certified to meet the California emission control standards specified under Title 13, California Code of Regulations, §1956.8 that were revised by the California Air Resources Board (CARB) on December 8, 2000, and effective on July 25, 2001.

The commission will hold a public hearing on this proposal in Austin on March 20, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-056-114-EN. The comment period closes March 26, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Morris Brown, Air Quality Planning Division, (512) 239-1438.

TRD-200800942
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 15, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 230

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 230, Groundwater Availability Certification for Platting.

The proposed rulemaking would implement Senate Bill (SB) 662, 80th Legislature, 2007. SB 662 requires the commission, in consultation with the Texas Water Development Board (TWDB), by rule, to require a plat applicant for the subdivision of a tract of land for which the in-

tended water source is groundwater to provide the TWDB and any applicable groundwater conservation district (GCD) additional information required under Local Government Code, §212.0101 or §232.0032, useful in performing GCD activities, conducting regional water planning, maintaining the TWDB's groundwater database, or conducting state studies on groundwater. In addition to the SB 662 changes, the proposed rulemaking would update citations to the Local Government Code and reference to the authority for laboratory accreditation and certification, arrange the definitions in alphabetical order, update the reference on state aquifers to reflect the most recent State Water Plan, and add definitions for "applicable groundwater conservation district or districts" and "executive administrator."

The commission will hold a public hearing on this proposal in Austin on March 27, 2008, at 2:00 p.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact John Gaete, Office of Legal Services, at (512) 239-6091.

Comments may be submitted to John Gaete, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-045-230-PR. The comment period closes March 31, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Kelly Mills, Water Right Permitting/Availability Unit, (512) 239-4512.

TRD-200800957
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 15, 2008

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 293

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 293, Water Districts.

The proposed rulemaking would implement House Bill (HB) 576, HB 1127, HB 1886, HB 2984, HB 3378, HB 3770, and Senate Bill 657, 80th Legislature, 2007, relating to water districts. The proposed rulemaking would require that a district must accept a bid bond if a contract is over $250,000; allow certain districts within Montgomery County to issue bonds supported by taxes to fund recreational facilities; allow a defined local governmental entity limited use of a design-build process to construct certain civil works projects; revise the qualifications to be a supervisor on a board of a Fresh Water Supply District (FWSD); allow a city with a certain population, when consenting to the creation of a district, to require that a district's water system meets the fire flow requirements adopted by the city; allow a petitioner seeking creation of a Municipal Utility District (MUD) to also request road powers at the time of creation; delete the requirement that a MUD have taxing authority before acquiring road powers; delete the requirement that a MUD have preliminary plan approval of proposed roads by the Texas Transportation Commission when obtaining road powers; define the types of roads that a MUD can finance and convey to a third party for operation and maintenance; increase the thresholds for bidding on district projects; and, allow the board of a special law district to elect to contract in accordance with Texas Water Code §49.273, even if it conflicts with provisions in the district's special law.

The commission will hold a public hearing on this proposal in Austin on March 27, 2008 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments.* File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-047-293-PR. The comment period closes March 31, 2008. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Randy Nelson, Water Supply Division, (512) 239-6160.

TRD-200800944
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 15, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of February 6, 2008 through February 14, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

AIR PRODUCTS LLC which operates the Battleground Road Facility, has applied for a renewal of TPDES Permit No. WQ0002177000, which authorizes the discharge of process wastewater, utility wastewater, hydrostatic test water, and storm water at a daily average flow not to exceed 12,000 gallons per day via Outfall 001. The facility is located on the east side of Battleground Road, approximately 1.75 miles north of the intersection of Battleground Road and State Highway 225 in the City of La Porte, Harris County, Texas. The Executive Director has reviewed this action for consistency with the goals and policies of

the Texas Coastal Management Program (CMP) in accordance with the regulations of the Coastal Coordination council (CCC) and has determined that the action is consistent with the applicable CMP goals and policies.

BANDERA COUNTY has applied to the TCEQ for a new permit, Proposed Permit No. WQ0014839001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 11,450 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 114,500 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located on State Highway 173, approximately 0.3 miles northeast of the intersection of State Highway 173 and Lower Mason Creek Road and 2 miles north of the City of Bandera in Bandera County, Texas.

CITY OF GORDON has applied to the TCEQ for a new permit, Proposed Permit No. WQ0014837001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 78,000 gallons per day via surface irrigation of 25 acres of non-public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located on the west side of Gordon Cemetery Road approximately two miles north of the City of Gordon in Palo Pinto County, Texas.

CITY OF KARNES CITY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010352003, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility will be located approximately 3,600 feet west of the intersection of State Highway 123 and Riddleville Street, along Riddleville Street to its intersection with Cleveland Street in Karnes County, Texas.

CITY OF PASADENA has applied for a renewal of TPDES Permit No. WQ0010053009, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 14,000,000 gallons per day. The facility is located at 209 North Main Street, on the north side of Little Vince Bayou in the City of Pasadena in Harris County, Texas.

CITY PUBLIC SERVICES OF SAN ANTONIO which operates Leon Creek Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0001517000, which authorizes the discharge of cooling tower blowdown, storm water, and previously monitored effluents (cooling tower blowdown, low volume wastes, metal cleaning wastes and storm water) at a daily average flow not to exceed 1,300,000 gallons per day via Outfall 001. The facility is located on the southeast corner of the intersection of Quintana Road and Pitluk Avenue, in the City of San Antonio, Bexar County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO. 47 has applied for a renewal of TPDES Permit No. WQ0010794001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 520,000 gallons per day. The facility is located at 3123 East Beltway 8, on the east side and adjacent to Carpenter Bayou and on the north side and adjacent to the Houston Northshore Railroad, approximately 1,000 feet north-northwest of the intersection of Interstate Highway 10 and East Belt Road in Harris County, Texas.

HARRIS COUNTY UTILITY DISTRICT NO 16 has applied for a renewal of TPDES Permit No. WQ0012614001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located 2,000 feet north of Hardy Road on Fernbush Dr. in American Plaza and approximately one mile north of the intersection of Hardy Road and Farrell Road Subdivision in Harris County, Texas.

JOCO HOLDING CORPORATION which operates a motel and restaurant complex, has requested a renewal of Permit No. WQ0002730000 which authorizes the disposal of domestic wastewater by evaporation and irrigation of 20 acres of coastal Bermuda grass at an application rate not to exceed 3.80 acre-feet per year per acre irrigated. This permit will not authorize a discharge of pollutants into water in the state. JOCO Holding Corporation originally applied for a major amendment to its existing permit seeking authorization to discharge treated domestic and food wastewaters on October 20, 2004. A public meeting was held on June 22, 2006. JOCO Holding Corporation filed a letter with the Executive Director on March 21, 2007 withdrawing the request for a discharge permit and requesting a renewal of its current permit authorizing the disposal of wastewater by evaporation and irrigation. The facility and land application site are located on the east side of Interstate Highway 35 West, approximately 200 feet southeast of Bethesda Road overpass and approximately 5.1 miles southeast of the City of Burleson, Johnson County, Texas.

MIRAGE STOP INC which operates the Mirage Stop Plant, has applied for a renewal of TPDES Permit No. WQ0003517000, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located on the northwest corner of the intersection of Interstate Highway (IH) 10 and Magnolia Avenue, approximately 1.8 miles west of the intersection of IH 10 and the San Jacinto River in the City of Houston, Harris County, Texas.

NITSCH AND SON UTILITY COMPANY INC has applied to for a renewal of TPDES Permit No. WQ0010419001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 8131 Northline Drive, approximately one mile east of Interstate Highway 45 and one-half mile north of Canino Road in Harris County, Texas.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0014008001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,000,000 gallons per day. The facility is located on Fourth Army Memorial Drive, east of the Fourth Army Memorial Drive crossing Stewart Creek, approximately three miles southeast of the intersection of Farm-to-Market Roads 423 and 720 in Denton County, Texas.

SOUTHERN WATER CORP has applied for a renewal of TPDES Permit No. WQ0010610001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 475,000 gallons per day. The facility is located at 9517 Sunnywood Drive, on the south bank of Halls Bayou, approximately 4,500 feet west of Interstate Highway 45 in Harris County, Texas.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010812001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The facility is located approximately 200 feet south of Aldine Mail Road between John F. Kennedy Boulevard and Gloger Road in Harris County, Texas.

TURNER INDUSTRIES GROUP LLC which operates Turner Industries Group, Paris Operations, has applied for a renewal of TPDES Permit No. WQ0000300000, which authorizes the discharge of non-contact cooling water air compressor cooling system and storm water at a daily maximum flow not to exceed 800,000 gallons per day via Outfall 001. The facility is located at 1200 SW 19th Street, in the northwest quadrant as defined by the intersection of Farm-to-Market Road 137 and the Missouri Pacific Railroad, approximately 0.6 mile north of Loop 286 and one mile southwest of the intersection of Farm-to-Mar-

ket Road 137 and State Highway 82 in the City of Paris, Lamar County, Texas.

ZAPATA COUNTY WATERWORKS has applied to the for a renewal of TPDES Permit No. WQ0010462001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 1/2 miles east of U.S. Highway 83 on Third Avenue in the City of Zapata in Zapata County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801025
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 20, 2008

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 18, 2008, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for seven specific medical procedure codes for chemotherapy services. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The chemotherapy services payment rates to be discussed are proposed to be effective April 1, 2008.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners and the specific fee guidelines published in Section 2.2.1.1 of the 2008 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200800985
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: February 19, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 18, 2008, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for seven specific medical procedure codes for brachytherapy services. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The brachytherapy services payment rates to be discussed are proposed to be effective April 1, 2008.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners and 1 TAC §355.8121, which addresses the reimbursement methodology for ambulatory surgical centers and the specific fee guidelines published in Section 2.2.1.1 of the 2008 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200800989
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: February 19, 2008

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Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on March 18, 2008, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for the 2008 Healthcare Common Procedure Coding System (HCPCS) new Medicaid procedure codes for medical, surgical, and radiological services. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The payment rates associated with the 2008 annual HCPCS procedure code updates are proposed to implement April 1, 2008, with a retroactive effective date of January 1, 2008.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, 1 TAC 355.8081, which addresses the reimbursement methodology for X-ray services, and the specific fee guidelines published in Section 2.2.1.1 of the 2008 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 4, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200800994
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: February 19, 2008

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Public Notice

Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Community-based Alternative (CBA) waiver, which is a Medicaid Home and Community-Based Services waiver under the authority of §1915(c) of the Social Security Act. The current 1915(c) waiver is approved from September 1, 2007, to August 31, 2012. The CBA waiver program allows elderly persons (age 65 and older) and persons over the age of 21 with a disability, who are eligible for nursing facility level of care, to receive services in the community rather than in an institutional facility. The CBA waiver program provides personal care, nursing services, adaptive aids, medical supplies, minor home modifications, and other supports to allow individuals to remain in the community.

This amendment removes Dallas and Tarrant service areas from the CBA waiver. CBA recipients will be transferred to the Integrated Care Management (ICM) program, a non-capitated, enhanced primary care case management model of Medicaid managed care operated under the authority of a 1915(c) waiver. This transfer will become effective February 1, 2008. Participants currently receiving CBA services who live in an ICM service delivery area will continue to receive the same array of services through the ICM 1915(c) waiver program. This amendment also removes the prohibition on payment for routine dental services.

HHSC is requesting that the waiver amendment be approved for the period beginning February 1, 2008, through August 31, 2012. This amendment maintains cost neutrality of service-costs for federal fiscal years 2008 through 2012.

To obtain copies of the proposed waiver, interested parties may contact Carmen Samilpa-Hernandez, Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, telephone: (512) 491-1128, fax: (512) 491-1953, e-mail: Carmen.Samilpa-Hernandez@hhsc.state.tx.us.

TRD-200801026
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: February 20, 2008

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Department of State Health Services

Designation of PediPlace as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: PediPlace, 502 S. Old Orchard, #126, Lewisville, Texas 75067. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200800979
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 15, 2008

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Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Fairfield	SABIA Inc	L06141	Fairfield	00	02/05/08
Houston	GO Imaging LLP	L06117	Houston	00	02/01/08
Marble Falls	Synergy Advanced Imaging LTD	L06146	Marble Falls	00	02/05/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alvin	Equistar Chemicals LP Chocolate Bayou Plant	L03363	Alvin	25	01/31/08
Austin	Asuragen Inc	L05977	Austin	05	02/06/08
Austin	ARA Imaging	L05862	Austin	26	02/06/08
Austin	Austin Nuclear Pharmacy Inc	L05591	Austin	08	02/12/08
Austin	PPD Development Inc DBA PPD Development	L04348	Austin	19	02/06/08
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	54	02/04/08
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	55	02/07/08
Beaumont	Health South Diagnostic Center of Texas LP DBA Health South Diagnostic Ctr of Beaumont	L03888	Beaumont	37	02/13/08
Beaumont	R Leldon Sweet MD PA DBA Outpatient Cardiovascular Services	L05029	Beaumont	10	02/13/08
Brownwood	Brownwood Specialty Group DBA BSG Imaging	L05878	Brownwood	04	02/11/08
Cleveland	Garnepudi V Prasad MD DBA Garnepudi V Prasad MD PA	L05629	Cleveland	02	01/31/08
Corpus Christi	Radiology & Imaging of South Texas LLP DBA Alameda Imaging Center	L05182	Corpus Christi	21	01/30/08
Corpus Christi	Radiology & Imaging of South Texas LLP DBA Alameda Imaging Center	L05182	Corpus Christi	22	02/05/08
Corpus Christi	Riverside Hospital Inc DBA Northwest Regional Hospital	L02977	Corpus Christi	42	02/08/08
Cypress	North Cypress Medical Center Operating Co LLC DBA North Cypress Medical Center	L06020	Cypress	07	02/04/08
Eagle Pass	Fort Duncan Medical Center	L05640	Eagle Pass	08	01/29/08
El Paso	Providence Memorial Hospital	L02353	El Paso	93	02/04/08
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L02365	El Paso	63	02/04/08
Fort Worth	Consultants in Cardiology	L04445	Fort Worth	17	02/05/08
Fort Worth	Cook Childrens Medical Center	L04518	Fort Worth	16	02/06/08
Fort Worth	Tarrant County Cardiology	L04659	Fort Worth	17	02/07/08
Fort Worth	Texas Oncology PA	L05606	Fort Worth	17	02/11/08
Fort Worth	Healthsouth of Texas Inc DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	23	02/11/08
Frisco	Tenet Hospital LTD DBA Centennial Medical Center	L05768	Frisco	08	02/01/08
Galveston	The University of Texas Medical Branch	L01299	Galveston	75	02/04/08
Houston	Diagnos Inc DBA Diagnos PET CT Imaging	L05971	Houston	03	02/13/08
Houston	Leachman Cardiology Associates PA	L05229	Houston	08	02/13/08
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	32	02/13/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	99	02/01/08
Houston	The Stehlin Foundation for Cancer Research	L04244	Houston	06	01/31/08
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	110	02/04/08
Houston	Heart Care Center of Northwest Houston	L05539	Houston	08	02/05/08
Houston	Gulf Coast Cancer and Diagnostic Center at Southeast Inc DBA Gulf Coast Cancer Center at Southeast	L05194	Houston	12	02/05/08
Houston	Wyle Laboratories Inc Life Sciences and Services	L04813	Houston	08	02/07/08
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	64	02/08/08
Houston	PETNET Houston LLC DBA PETNET Houston LLC	L05542	Houston	17	02/08/08
Houston	Tops Specialty Hospital LTD DBA Tops Surgical Specialty Hospital	L05441	Houston	12	02/08/08
Houston	SJ Medical Center LLC DBA St Joseph Medical Center	L02279	Houston	66	02/08/08
Houston	Uson LP	L05669	Houston	02	02/07/08
Huntsville	Services and Compliance Consultants Inc	L03873	Huntsville	21	02/13/08
Katy	Cardiology Center of Houston PA	L05400	Katy	07	01/31/08
La Porte	Cardiorad Inc	L05755	La Porte	14	02/05/08
Longview	Longview Regional Hospital Inc DBA Longview Regional Medical Center	L02882	Longview	39	02/11/08
Lubbock	Texas Tech University Environmental Health and Safety	L01536	Lubbock	84	02/12/08
Lubbock	University Medical Center	L04719	Lubbock	96	02/11/08
Lubbock	Texas Tech University Environmental Health and Safety	L01536	Lubbock	83	02/04/08
Lufkin	Heart and Vascular Diagnostic Clinic	L05850	Lufkin	04	02/04/08
McAllen	Texas Oncology PA DBA South Texas Cancer Center at McAllen	L04880	McAllen	07	02/06/08
Midland	Texas Oncology PA DBA Allison Cancer Center	L05614	Midland	07	02/12/08
Midlothian	TXI Operations LP	L01421	Midlothian	45	02/06/08
Odessa	Odessa Regional Hospital LP DBA Odessa Regional Medical Center	L04885	Odessa	12	02/11/08
Paris	Advanced Heart Care PA	L05290	Paris	24	01/30/08
Pasadena	Ethyl Corporation	L05094	Pasadena	08	02/12/08
Plano	Presbyterian Hospital of Plano	L04467	Plano	47	02/04/08
Plano	Texas Heart Hospital of the Southwest LLP DBA The Heart Hospital Baylor Plano	L06004	Plano	09	02/05/08
Plano	Medical Edge Healthcare Group PA DBA Heart First	L05555	Plano	20	02/05/08
Rockdale	Luminant Generation Company LLC DBA Luminant Power	L04075	Rockdale	13	02/07/08
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	239	02/05/08
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	113	02/05/08
Temple	Texas A&M University System Health Science Center	L05494	Temple	11	02/14/08
Throughout TX	Desert Industrial X-ray LP	L04590	Abilene	76	02/11/08
Throughout TX	RSI Inspection LLC	L05624	Abilene	12	02/04/08
Throughout TX	Applied Standards Inspection Inc	L03072	Beaumont	100	02/07/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout TX	Gulf Coast Weld Spec	L05426	Beaumont	65	02/07/08
Throughout TX	C D S Enterprises Inc	L05356	College Station	03	02/04/08
Throughout TX	NDE Solutions LLC	L05879	College Station	13	02/14/08
Throughout TX	Wilson Inspection X-ray Services Inc	L04469	Corpus Christi	58	02/07/08
Throughout TX	Fargo Consultants Inc	L05300	Dallas	07	02/06/08
Throughout TX	IRISNDT Inc	L04769	Deer Park	48	02/08/08
Throughout TX	Weatherford International Inc	L04286	Fort Worth	73	01/30/08
Throughout TX	City of Fort Worth Housing Department	L05420	Fort Worth	04	02/08/08
Throughout TX	Kohutek Engineering & Testing Inc	L05967	Georgetown	02	02/06/08
Throughout TX	Protechnics Division of Core Laboratories LP	L03835	Houston	53	02/07/08
Throughout TX	Protechnics Environmental Division of Core Laboratories LP	L04477	Houston	17	02/07/08
Throughout TX	Golder Associates Inc	L04645	Houston	08	02/04/08
Throughout TX	LFC Inc	L05970	Houston	03	02/04/08
Throughout TX	Roxar Inc	L05547	Houston	12	02/01/08
Throughout TX	METCO	L03018	Houston	181	02/06/08
Throughout TX	Marco Inspection Services LLC	L06072	Kilgore	07	02/06/08
Throughout TX	Master Industries Inc	L05872	Liberty	14	02/04/08
Throughout TX	House Engineering and Construction Inc	L04702	Longview	17	02/04/08
Throughout TX	NORM Decon Services LLC	L04917	Midland	19	01/30/08
Throughout TX	Big State X-ray	L02693	Odessa	65	02/08/08
Throughout TX	Black Warrior Wireline Corp	L04473	Odessa	24	01/31/08
Throughout TX	Texas Gamma Ray LLC	L05561	Pasadena	80	02/07/08
Throughout TX	Turner Specialty Services LLC	L05417	Pasadena	32	02/12/08
Throughout TX	Fugro Consultants	L04322	Pasadena	91	02/04/08
Throughout TX	Entech Laboratory Systems Inc	L05634	Perrytown	05	01/31/08
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	144	02/06/08
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	105	02/12/08
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	21	02/04/08
Wichita Falls	Clinics of North Texas LLP	L00523	Wichita Falls	54	02/05/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Park Plaza Hospital	L01812	Houston	22	02/04/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Texas Scottish Rite Hospital for Crippled Children DBA Texas Scottish Rite Hospital	L05379	Dallas	03	01/30/08
San Antonio	Cancer Therapy and Research Center	L01922	San Antonio	90	02/05/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200800978
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: February 15, 2008

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by ARI INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Brownsville, Texas.

Application to change the name of NUTMEG LIFE INSURANCE COMPANY to ACCENDO INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Salt Lake City, Utah.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200801028
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 20, 2008

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation proposed amendments to 28 TAC §133.10 concerning Health Care Provider Billing Procedures. The proposed notice appeared in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1232). In subsection (a)(3) on page 1234, the reference to Subchapter G should have been underlined. The paragraph should read as follows:

"(3) in electronic format in accordance with Subchapter G ~~[F]~~ of this chapter (relating to Electronic Medical Billing, Reimbursement, and Documentation)."

TRD-200801011

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Texas Lottery Commission

Instant Game Number 1044 "Lucky Symbols"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1044 is "LUCKY SYMBOLS". The play style is "match 3 of 9 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1044 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1044.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100, $1,000 and DOLLAR BILL SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1044 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
DOLLAR BILL SYMBOL	AUTO

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1044 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $50.00 or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1044), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1044-0000001-001.

L. Pack - A pack of "LUCKY SYMBOLS" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY SYMBOLS" Instant Game No. 1044 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket.

A prize winner in the "LUCKY SYMBOLS" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals 3 matching amounts, the player wins that amount. If a player reveals 2 matching amounts and a dollar bill play symbol, the player wins that amount instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more matching play symbols on a ticket.

C. No three or more pairs of play symbols on a ticket.

D. When the "dollar bill" (auto win) play symbol appears, there will only be one pair of matching play symbols on the ticket.

E. The top prize will appear on every ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY SYMBOLS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $40.00, $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY SYMBOLS" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY SYMBOLS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of send-

ing a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY SYMBOLS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY SYMBOLS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1044. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1044 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	924,800	8.82
$2	380,800	21.43
$4	163,200	50.00
$5	81,600	100.00
$10	54,400	150.00
$20	13,600	600.00
$40	17,000	480.00
$50	4,896	1,666.67
$100	2,720	3,000.00
$1,000	136	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.97. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1044 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1044, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200800920
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 14, 2008

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Instant Game Number 1059 "Wild Cherries"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1059 is "WILD CHERRIES". The play style is "slots-straight line".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1059 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1059.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: APPLE SYMBOL, ORANGE SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, GOLD BAR SYMBOL, SEVEN SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, PINEAPPLE SYMBOL, CHERRY SYMBOL, $2.00, $3.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $20,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1059 - 1.2D

PLAY SYMBOL	CAPTION
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
MELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSESHOE SYMBOL	SHO
CLOVER SYMBOL	CLO
GOLD BAR SYMBOL	BAR
SEVEN SYMBOL	SVN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
PINEAPPLE SYMBOL	PNA
CHERRY SYMBOL	AUTO
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1059 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $100.

I. High-Tier Prize - A prize of $1,000 or $20,000.

J. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1059), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1059-0000001-001.

L. Pack - A pack of "WILD CHERRIES" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD CHERRIES" Instant Game No. 1059 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WILD CHERRIES" Instant Game is determined once the latex on the ticket is scratched off to expose 40 (forty) play symbols. If a player reveals three (3) matching symbols within a GAME, the player wins the PRIZE for that GAME. If the player reveals a cherry symbol, the player wins the PRIZE for that game instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 40 (forty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 40 (forty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 40 (forty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 40 (forty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No three or more identical non-winning prize symbols on a ticket.

D. The "CHERRY" (auto win) play symbol will only appear once on a ticket.

E. The top prize will appear on all tickets unless otherwise restricted by the prize structure.

F. There will be many near wins in the GAMES.

G. No duplicate non-winning GAMES (in the same order).

H. The "CHERRY" (auto win) play symbol will never appear in a GAME with 2 matching play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD CHERRIES" Instant Game prize of $2.00, $3.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILD CHERRIES" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILD CHERRIES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "WILD CHERRIES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "WILD CHERRIES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 tickets in the Instant Game No. 1059. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1059 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	623,040	11.36
$3	396,480	17.86
$4	283,200	25.00
$5	84,960	83.33
$10	56,640	125.00
$20	56,640	125.00
$50	56,050	126.32
$100	4,425	1,600.00
$1,000	80	88,500.00
$20,000	10	708,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1059 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1059, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200800981
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 15, 2008

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Intent to Conduct Restoration Planning

Explorer Pipeline Jet Fuel Spill - Walker County, Texas, July 20, 2007

AGENCIES: Texas Parks and Wildlife Department (TPWD), Texas Commission on Environmental Quality (TCEQ), Texas General Land Office (GLO), and the United States Fish and Wildlife Service (USFWS) of the United States Department of the Interior

ACTION: Notice of Intent to Conduct Restoration Planning Pursuant to the Oil Pollution Act of 1990 (OPA) for the impacts from the July 2007 Jet Fuel A discharge into Turkey Creek in Walker County, Texas.

SUMMARY: Natural Resource Trustees (Trustees) are designated pursuant to OPA, 33 U.S.C. §2706(b), Executive Order 12777, and the National Contingency Plan, 40 CFR §300.600 and 300.605, with responsibility to conduct natural resource damage assessments on behalf of the public when discharges of oil affect natural resources and services.

On 14 July 2007, a 5-foot split occurred in a 28-inch, high pressure transmission line belonging to Explorer Pipeline, resulting in an unauthorized discharge of Jet Fuel A just east of the City of Huntsville, in Walker County, Texas. Approximately 7,000 barrels (294,000 gallons) of jet fuel were discharged onto land and into Turkey Creek and adjacent riparian habitat. Jet fuel was observed at the discharge point and extended about 4.5 miles downstream in Turkey Creek. Fish and wildlife kills, tree mortality, and impacts to terrestrial habitat were observed at the spill site. Trustees for this incident are TPWD, TCEQ, GLO, and USFWS. The Trustees have determined that the incident warrants further assessment and restoration planning as determined by the OPA natural resource damage assessment (NRDA) rules. This no-

tice serves to inform the public that the Trustees are proceeding with the assessment, including restoration planning, and will subsequently seek public input for planning restoration for the injuries resulting from this oil spill. This assessment will be conducted in accordance with the NRDA regulations for oil spills at 15 CFR §§990.10 et seq.

ADDRESSES: A copy of this Notice of Intent and further information relating to the assessment and restoration planning may be obtained by contacting: Johanna Gregory, Natural Resource Damage Assessment Program, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, Phone: (512) 912-7103, email: johanna.gregory@tpwd.state.tx.us.

DATES: Comments must be submitted in writing within 30 days of the publication of this notice to Johanna Gregory of the Texas Parks and Wildlife Department at the address listed in the previous paragraph. The Natural Resource Trustees will consider written comments received during the 30-day comment period in developing the draft damage assessment and restoration plan for the incident.

SUPPLEMENTARY INFORMATION: As part of the initial response activities, the Trustees coordinated with both State and Federal responders to provide technical support and conduct initial surveys of areas where spill impacts were observed. The Trustees documented the areas oiled, the degree of oiling, and any observed impacts or mortality. Response activities implemented by the responsible party included building earthen berms within Turkey Creek, excavating the pipeline, and recovering free product from Turkey Creek with vacuum trucks. As the emergency response continued, it was necessary to use heavy equipment to excavate and remove the damaged section of line, as well as, provide access to Turkey Creek. When spill response activities transitioned from emergency response into remedial response, banks were washed with low pressure, high volume water to remove residual jet fuel and consolidate the remaining free product into central areas for collection. Emergency and remedial response actions removed most of the jet fuel from Turkey Creek within 8 days of the release. Monitoring and maintenance activities are expected to continue over the next several months. The Trustees are continuing to coordinate and provide technical support for the remedial activities at the spill site.

The response actions described have not adequately addressed, or are not expected to address, the potential or actual injuries from the incident. Therefore further assessment of actual or potential injuries to natural resource services is warranted. In support of their decision to proceed with the assessment and issue this notice, the Trustees made several determinations as required by 15 CFR §990.41. First, the Trustees have jurisdiction to pursue restoration pursuant to OPA. The Trustees have determined that the release of approximately 7,000 barrels of Jet Fuel A, which resulted in oil exposure of the navigable waters of the United States and Texas, constituted an incident as defined in 15 CFR §990.30. This incident was not permitted under state, federal or local law. Second, using information gathered during preassessment activities, the Trustees have determined that natural resources under their trusteeship have been injured as a result of this incident.

The Trustees have made the further determination required by 15 CFR §990.42, that it is appropriate to proceed with restoration planning for this incident. Restoration planning is necessary since injuries have resulted from the incident and are not expected to be wholly compensated for by response or remedial activities. Natural resources or their services injured as a result of the spill and spill response include, but are not limited to, upland habitat, riparian habitat, and surface waters of Turkey Creek. Biota impacted by the spill include fish, birds, other wildlife species, and benthic communities.

The Trustees have determined that appropriate assessment procedures are available for this incident and meet the applicable standards for such methods set forth in 15 CFR §990.27.

The Trustees have also determined that there are opportunities available in or near the impacted area to restore or compensate for injuries to natural resources and their services.

The Trustees intend to use the results of site monitoring, photographic documentation, and geographical information systems evaluation in conjunction with habitat equivalency analysis, as a resource-to-resource approach, to determine and quantify injury levels as well as scale appropriate restoration actions.

For further information relating to this notice, contact: Johanna Gregory at (512) 912-7103, fax: (512) 912-7160, e-mail: johanna.gregory@tpwd.state.tx.us.

TRD-200800984
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 19, 2008

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Notice of Proposed Real Estate Transaction and Opportunity for Comment

Acceptance of Land Donation - Marion County

On March 27, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider the acceptance of a donation of four lots totaling approximately one acre adjacent to the Caddo Lake Wildlife Management Area in Marion County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may also be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or made in person at time of meeting.

TRD-200800983
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: February 19, 2008

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State Preservation Board

Notice of Consultant Contract Award

The State Preservation Board ("SPB"), in accordance with Chapter 2254 of the Texas Government Code, has awarded a consultant contract to People, Places & Design Research, 65 South Street, Ste. 10, Northhampton, MA 01060, for a museum exhibit formative evaluation. Effective date of the consultant contract is February 13, 2008, with a written final analysis report due on or before June 18, 2008, the ending date of the contract. Cost for the term of the contract is $24,000, including reimbursable travel.

Questions concerning this notice may be directed to David Denney, Interim Executive Director, The Bob Bullock Texas State History Museum, (512) 936-2311.

TRD-200801020

Linda Gaby
Director of Administration
State Preservation Board
Filed: February 20, 2008

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Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 12, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Moviestar Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35365 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company d/b/a AT&T Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 5, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35365.

TRD-200800939
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 14, 2008

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Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Hill Country Telephone Cooperative, Inc. (Hill Country) application filed with the Public Utility Commission of Texas (commission) on February 1, 2008, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Application of Hill Country Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171; Tariff Control Number 35304.

The Application: Hill Country filed an application to increase certain service charge rates and equalize access line rates throughout its exchange area. The proposed effective date for the proposed rate changes is May 28, 2008. The estimated annual revenue increase recognized by Hill Country is $6,802 or less than 5% of Hill Country's gross annual intrastate revenues. Hill Country has 17,592 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 880 of the affected local service customers to which this application applies by April 21, 2008, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 21, 2008. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 35304.

TRD-200800940
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 14, 2008

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Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University is seeking proposals from executive search firms to conduct a search for the position of Vice President for Development. The search firm will be expected to assist with the creation of the position announcement and develop an advertising/outreach strategy to identify qualified candidates, successfully implement the search strategy and present a pool of qualified candidates to the University for consideration.

CRITERIA: Evaluation will be based on previous experience in conducting executive searches, evidence of availability and capacity for successful completion of this search, client references and fees. Interested parties must submit a proposal with the following information: experience; qualifications; the name, address and phone number of the individual assigned to the account; references; and fees, including identifying costs included in the base fee and costs that will be considered reimbursable.

DEADLINES AND CONTACT INFORMATION: Proposals will be submitted to Diana Boubel, Director of Purchasing and Inventory, P.O. BOX 13030, Nacogdoches, Texas 75962, (936) 468-4037, fax (936) 468-4282, no later than March 7, 2008.

TRD-200801009
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: February 19, 2008

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Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will direct external evaluation and research activities under the Texas Middle and Secondary Mathematics Project funded by the National Science Foundation. The firm that was awarded the contract was stipulated in the grant.

The contract was awarded to Horizon Research, Inc., 326 Cloister Court, Chapel Hill, North Carolina, for an amount not to exceed $80,000.00.

The beginning date of the contract is January 15, 2008, and the ending date is September 30, 2009.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant.

For further information, please contact Dr. Carrie H. Brown, Director, Office of Research and Sponsored Projects, Stephen F. Austin State University, PO Box 13024, Nacogdoches, Texas 75962, (936) 468-6606.

TRD-200801002
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: February 19, 2008

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Workforce Solutions North Texas

Request for Proposals

Child Care Delivery Services

Workforce Solutions North Texas is seeking proposals for the management and delivery of Child Care services incorporating at a minimum: the Workforce Investment Act (WIA), Temporary Assistance for Needy Families (TANF)/Choices, Food Stamp Employment and Training (FSE&T), and Child Care services.

The contracting period will begin no earlier than October 1, 2008. The Workforce Solutions North Texas workforce development area includes the following 11 counties in North Texas: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, and Young.

To obtain Request for Proposal packets or to obtain more information, contact Joe Winkcompleck, Administrative Technician, at (940) 767-1432; fax: (940) 322-2683; or e-mail: joe.winkcompleck@twc.state.tx.us. Deadline to submit a proposal is 4:00 p.m. Friday, April 11, 2008.

We will hold a Bidders' Conference at 10:00 a.m. on Tuesday, March 11, 2008, in the Workforce Solutions conference room at 901 Indiana Avenue, Suite 180, Wichita Falls, Texas.

We will not accept questions over the phone. We will accept written questions until noon on Tuesday, March 11, 2008. We will answer all questions during the Bidders' Conference.

The Workforce Solutions North Texas Board is an Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities.

Program operation is dependent upon availability of funds from the Texas Workforce Commission.

TRD-200801027
Joe Winkcompleck
Administrative Technician
Workforce Solutions North Texas
Filed: February 20, 2008

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).